

THE GENERAL STATUTES OF NORTH CAROLINA

1969 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
D. W. PARRISH, JR., S. G. ALRICH, W. M. WILLSON
AND SYLVIA FAULKNER

Volume 3A

Place in Pocket of Corresponding 1966 Replacement Volume of
Main Set and Discard Previous Supplement

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Preface

This Cumulative Supplement to Replacement Volume 3A contains the general laws of a permanent nature enacted at the 1966, 1967 and 1969 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

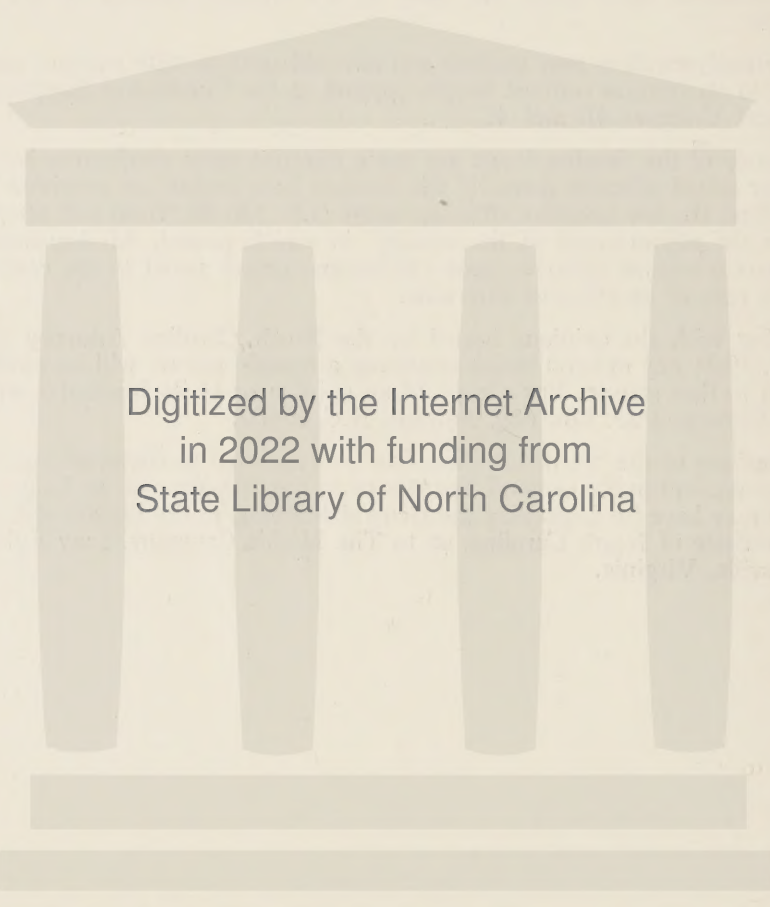
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1967 and 1969 Sessions of the General Assembly affecting Chapters 106 through 116 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 265 (p. 217)-275 (p. 341).
North Carolina Court of Appeals Reports volumes 1-5 (p. 227).
Federal Reporter 2nd Series volumes 347 (p. 321)-410 (p. 448).
Federal Supplement volumes 242 (p. 513)-298 (p. 1200).
United States Reports volumes 381 (p. 532)-394 (p. 575).
Supreme Court Reporter volumes 86-89 (p. 2151).
North Carolina Law Review volumes 43 (p. 667)-47 (p. 731).
Wake Forest Intramural Law Review volumes 2-5.

The General Statutes of North Carolina 1969 Cumulative Supplement

VOLUME 3A

Chapter 106.

Agriculture.

Article 4C.

Structural Pest Control Act.

Sec.

- 106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.
- 106-65.28. Revocation or suspension of license.
- 106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.
- 106-65.33. Violation of article or rules and regulations of Committee a misdemeanor.
- 106-65.34. [Repealed.]

Article 16.

Bottling Plants for Soft Drinks.

- 106-184.1. Department of Agriculture authority.

Article 22.

Inspection of Bakeries.

- 106-225.3. Unlawful sale of bread, rolls or buns.

Article 25A.

North Carolina Egg Law.

- 106-245.16. Standards, grades and weight classes.

Article 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

- 106-304. Proclamation of livestock and poultry quarantine.
- 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.
- 106-307.4. Quarantine of inoculated poultry.
- 106-307.5. Livestock and poultry brought into State.

Part 3. Hog Cholera.

Sec.

- 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.
- 106-322.3. When indemnity payments not to be made.

Part 8. Brucellosis (Bang's Disease).

- 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.
- 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.
- 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.
- 106-391. Civil liability of vendors.
- 106-392. Sales by nonresidents.
- 106-393. Duties of State Veterinarian; quarantine of animals; required testing.
- 106-394. Cooperation of county boards of commissioners.
- 106-395. Compulsory testing.
- 106-396. Authority to promulgate and enforce rules and regulations.
- 106-397. Violation made misdemeanor.
- 106-398. Punishment for sale of animals known to be infected, or under quarantine.
- 106-399. [Repealed.]

Part 9. Control of Livestock Diseases.

- 106-401.1. Inspection and quarantine of poultry.

Article 35.

Public Livestock Markets.

- 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.

GENERAL STATUTES OF NORTH CAROLINA

- Sec.
106-407. Bonds required of operators; exemption of certain market operations.
106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.
106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.
106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed.
106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.
106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc.
106-413. Sale, etc., of certain diseased animals restricted; application of article; sales by farmers.
106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.
106-415. Costs of tests, serums, etc.
- Article 38.**
Marketing Cotton and Other Agricultural Commodities.
106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.
- Article 49.**
Poultry; Hatcheries; Chick Dealers.
106-539. National poultry and turkey improvement plans.
106-542. Hatcheries, chick dealers and others to obtain permit to operate.
106-543. Requirements of national poultry and turkey improvement plans must be met.
106-548. Fees; quarantine; compulsory testing.
- Article 49B.**
Meat Inspection Requirements; Adulteration and Misbranding.
106-549.15. Definitions.
106-549.16. Statement of purpose.
106-549.17. Inspection before slaughter.
106-549.18. Inspection; stamping carcass.
- Sec.
106-549.19. Application of article; place of inspection.
106-549.20. Inspectors access to businesses.
106-549.21. Stamping container or covering; regulation of container.
106-549.22. Rules and regulations of Board.
106-549.23. Prohibited slaughter, sale, and transportation.
106-549.24. Prohibited acts regarding certificate.
106-549.25. Slaughter, sale and transportation of equine carcasses.
106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.
106-549.27. Exemptions from article.
106-549.28. Regulation of storage of meat.
- Article 49C.**
Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.
106-549.29. North Carolina Department of Agriculture responsible for cooperation.
106-549.29.1. [Repealed.]
106-549.30. Refusal of Commissioner to inspect and certify meat.
106-549.31. Enforcement against uninspected meat.
106-549.32. Enforcement against condemned meat; appeal.
106-549.33. Jurisdiction of superior court.
106-549.34. Interference with inspector.
106-549.35. Punishment for violation.
106-549.36. Gathering information; reports required; use of subpoena.
106-549.37. Jurisdiction coterminous with federal law.
106-549.38. Rules and regulations of State Department of Agriculture.
106-549.39. Hours of inspection; overtime work; fees.
106-549.40 to 106-549.48. [Repealed.]
- Article 49D.**
Compulsory Poultry Inspection.
106-549.69. Penalties; stop-sale order.
- Article 50.**
Promotion of Use and Sale of Agricultural Products.
106-557.1. Ballot by mail.
106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.
106-564.3. Alternative method for collection of assessments relating to cattle.

Article 50C.**Promotion of Sale and Use of Tobacco.**
Sec.

- 106-568.18. Policy as to joint action of farmers.
- 106-568.19. Policy as to referendum on question of annual assessment.
- 106-568.20. Referendum in 1961 on assessment for next three years.
- 106-568.21. Effect of more than one-third vote against assessment in 1961 referendum.
- 106-568.22. Effect of two-thirds vote for assessment in 1961 referendum.
- 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.
- 106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results.

Sec.

- 106-568.25. Question at 1961 referendum.
- 106-568.26. Collection of assessments; custody and use of funds.
- 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.
- 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.
- 106-568.29. Subsequent referendum after defeat of assessment.
- 106-568.30. Referendum as to continuance of assessments approved at prior referendum.
- 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.
- 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.
- 106-568.33. Effect of article on prior acts.

ARTICLE 1.*Department of Agriculture.***Part 2. Commissioner of Agriculture.**

§ 106-11. Salary of Commissioner of Agriculture.—The salary of the Commissioner of Agriculture shall be twenty-two thousand, five hundred dollars (\$22,500.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4; 1969, c. 1214, s. 4.)

Editor's Note.—

Both 1967 amendments increased the salary from \$18,000 to \$20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the

second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from \$20,000 to \$22,500.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.**§ 106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture.**

Amendment Effective July 1, 1970.—Session Laws 1969, c. 796, effective July 1, 1970, will substitute "forty cents (40¢)"

for "twenty cents (20¢)" in the first and second sentences.

ARTICLE 4B.*Aircraft Application of Pesticides.***§ 106-65.14. Licenses.**

Local Modification.—Henderson: 1967, c. 1140.

Opinions of Attorney General. — Mr.

E.W. Constable, State Chemist, N.C. Department of Agriculture, 8/20/69.

ARTICLE 4C.

Structural Pest Control Act.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.—There is hereby created, within the North Carolina Department of Agriculture, a new division thereof, to be known as the Structural Pest Control Division of said Department.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner, subject to approval of the Board of Agriculture and subject to the provisions of this article. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: One for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

It shall be the duty of the Structural Pest Control Committee, in addition to conducting hearings relating to the suspension and revocation of licenses issued under this article, and in addition to making rules and regulations pursuant to G.S. 106-65.29, to report annually to the Board of Agriculture the results of all hearings conducted by the Committee and to report the financial status of this Division of the Department of Agriculture.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive twenty dollars (\$20.00) per diem while actually engaged in the business of the Committee. All members of the Committee and the attorney assigned to said Committee by the Attorney General shall be entitled to receive eight cents (8¢) per mile for travel and such other expenses as are incurred in the performance of their duties.

Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Com-

mittee may call a special meeting of the Committee on five days' notice to the other members thereof.

All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1957, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7.)

Editor's Note. — The 1967 amendment rewrote this section.

Session Laws 1967, c. 1184, s. 14, provides: "The terms of all members of the Structural Pest Control Commission shall expire on June 30, 1967."

Session Laws 1967, c. 1184, s. 15, provides: "All rules and regulations heretofore made by the Structural Pest Control Commission not inconsistent with the provisions of article 4C of chapter 106 of the

General Statutes and this act, shall remain in full force and effect until repealed, revised, or amended pursuant to the provisions of said article and this act or until declared invalid by a court of competent jurisdiction."

The 1969 amendment deleted "in addition to the duties imposed by G.S. 106-65.36" following "Committee" near the beginning of the fourth paragraph.

§ 106-65.24. Definitions.

- (2) The term "branch office," as used in this article, shall mean and include any place of doing business which has two or more employees engaged full time in the control of insect pests, rodents, or wood-destroying organisms.
- (3) "Committee" means the Structural Pest Control Committee.
- (11) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3.)

Editor's Note. — The 1967 amendment rewrote subdivision (3) and added subdivision (11).

Subdivision (2) is set out in the Supple-

ment to correct an error appearing in the replacement volume.

As the rest of the section was not affected by the amendment, it is not set out.

§ 106-65.25. Phases of structural pest control; license required; exceptions.—(a) Structural pest control is divided into the following phases:

- (1) Control of wood-destroying organisms by any method other than fumigation,
- (2) Control of household pests by any method other than fumigation,
- (3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.

(1967, c. 1184, s. 4.)

Editor's Note. — The 1967 amendment substituted "Committee, and signed by the Commissioner of Agriculture" for "Commission" at the end of subsection (a).

As subsection (b) was not affected by the amendment, it is not set out.

§ 106-65.26. Qualifications of applicants for license.—Any applicant for a license must present satisfactory evidence to the Committee concerning his qualifications for such license. The basic qualifications shall be:

- (1) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied, or
- (2) One or more years training in specialized pest control, control of wood-

destroying organisms or fumigation under university or college supervision may be substituted for practical experience (each year of such training may be substituted for one-half year of practical experience), or

- (3) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision.
- (4) All applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation.

No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of *nolo contendere* to a crime charged involving moral turpitude or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this article. (1955, c. 1017; 1967, c. 1184, s. 5.)

Editor's Note. — The 1967 amendment in the first sentence and added the last substituted "Committee" for "Commission" paragraph.

§ 106-65.27. Examination of applicants; fee; license not transferable.—(a) All applicants must pass a satisfactory oral or written examination, or both oral and written examination. Frequency of such examination shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover phases of structural pest control (control of wood-destroying organisms, household pests and fumigation).

An applicant shall submit with his application for examination an examination fee of twenty-five dollars (\$25.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee.

(b) A license shall not be transferable. When there is a transfer of ownership, management or operation of a business of a licensee hereunder, the new owner, manager or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Committee following the expiration of said 90-day period, to have a qualified licensee to operate said business. (1955, c. 1017; 1967, c. 1184, s. 6.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106-65.28. Revocation or suspension of license.—(a) Any license may be revoked or suspended by a majority vote of the Committee, after notice and hearing, as provided in G.S. 106-65.32, for any one or more of the following causes:

- (1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.
- (2) Failure of the licensee to give the Committee, the Director, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.
- (3) Failure of the license holder to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license.

(5) Wilful violation of any rule or regulation adopted pursuant to this article.

(b) Suspension of any license under the provisions of this article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

If a license is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Director or his authorized representative.

Any licensee whose license is revoked under the provisions of this article shall not be eligible to apply for a new license hereunder until two years have elapsed from the date of the order revoking said license, or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation. (1955, c. 1017; 1967, c. 1184, s. 7.)

Editor's Note. — The 1967 amendment designated the provisions of this section as subsection (a), rewrote the introductory language and subdivision (2) of such subsection, added subdivision (5) therein, and added subsection (b).

§ 106-65.29. Rules and regulations. — The Committee is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017; 1967, c. 1184, s. 8.)

Editor's Note. — The 1967 amendment substituted "Committee" for "Commission" in the first sentence.

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.—For the enforcement of the provisions of this article, the Director is authorized, subject to the approval of the Commissioner and Board of Agriculture, to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this article. The inspectors shall be known as "Structural Pest Control Inspectors." The Director, subject to the approval of the Commissioner of Agriculture and the Board of Agriculture, shall enforce the provisions of this article by making or causing to be made periodical and unannounced inspections of work done by licensees under this article engaged in any one or more phases of structural pest control as defined in G.S. 106-65.25. The Director shall cause the prompt and diligent investigation of all reports of violations of the provisions of this article and the rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by the Director, or inspectors, of any property without first securing the permission of the owner or occupant thereof.

Every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Director, a resident agent upon whom service or notice of process may be had to enforce the provisions of this article or any civil or criminal liabilities arising hereunder. (1955, c. 1017; 1967, c. 1184, s. 9.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.—The fee for the issuance of a license for any one phase of structural pest control, as the same is defined in G.S. 106-65.25, shall be one hundred dollars (\$100.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license

may secure a license for either or both of the other two phases for an additional fee of fifty dollars (\$50.00) per license phase. Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew any license issued under the provisions of this article on or before August 1 of each year, shall pay, in addition to the annual license fee, the sum of ten dollars (\$10.00) for each phase before his license is renewed.

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of five dollars (\$5.00).

A license holder shall register with the Director within 30 days of employment, the names of all solicitors and servicemen (not common laborers) and shall pay a registration fee of twenty dollars (\$20.00) for each name registered, which fee shall accompany the registration. All registrations expire when a license expires. Each employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty dollars (\$20.00). An identification card shall be displayed upon demand to the Director or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar (\$1.00). The licensee shall be responsible for registering and securing identification cards for all employees who are salesmen, servicemen and estimators.

It shall be unlawful for a serviceman, salesman or estimator to engage in the performance of any work covered by this article without having first secured and in his possession an identification card. It shall be unlawful for a licensee to direct, or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 30 days after employing a serviceman, salesman or estimator within which to apply for an identification card.

All registrations and applications for licenses and identification cards shall be filed with the Director. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106-65.32. Proceedings and hearings under article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.—Proceedings under this article shall be taken by the Structural Pest Control Committee for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Committee, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Committee shall serve notice by registered mail of the time, place of hearing, and a copy of the charges upon the accused at least 30 days before the date of the hearing. The Committee for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Committee and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Committee under the seal of the Committee and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Committee shall be under oath or affirmation.

The record of all hearings and judgments shall be kept by the secretary of the Committee and in the event of suspension or revocation of license, the Committee

shall, within 10 days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county.

Any licensee may appeal to the Superior Court of Wake County the revocation or suspension of a license issued under the provisions of this article and such appeal shall be made pursuant to the provisions of article 33 of chapter 143 of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11.)

Editor's Note. — The 1967 amendment throughout this section, and added the last substituted "Committee" for "Commission" paragraph.

§ 106-65.33. Violation of article or rules and regulations of Committee a misdemeanor.—Any person violating any provision of this article or any rule or regulation of the Committee made pursuant to this article shall be guilty of a misdemeanor and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106-65.34: Repealed by Session Laws 1967, c. 1184, s. 13.

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ 106-176. Establishment and equipment kept clean; containers sterilized.—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily. All returnable bottles and similar type returnable containers must be cleaned and sanitized in caustic soda or alkali solution in not less than three percent alkali or to an equivalent cleansing and sanitizing effect as prescribed by the rules and regulations adopted by the Board of Agriculture. Single service containers must be cleaned and sanitized according to rules and regulations adopted by the North Carolina Board of Agriculture. (1935, c. 372, s. 3; 1937, c. 232; 1969, c. 1068.)

Editor's Note. — The 1969 amendment relating to cleaning and sanitizing of bottles rewrote the provisions of this section re- and containers.

§ 106-184.1. Department of Agriculture authority. — The Board of Agriculture shall have authority to make rules and regulations for the enforcement of this article. The Board shall have authority to delegate the responsibility for determining the amount of any ingredients which may be used in the manufacture of soft drinks in order that soft drinks will comply with the North Carolina Food, Drug and Cosmetic Act and insofar as is practicable, federal law and regulations. No ingredient shall be used in the manufacture of soft drinks without the prior approval of the Board of Agriculture or such other person as is designated by the Board of Agriculture. The Board shall by regulation provide for appeals from the ruling of the Board or such other person designated by the Board. (1969, c. 49.)

ARTICLE 17.

Marketing and Branding Farm Products.

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, sub-

ject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." This proviso shall not apply to peaches. (It is the intent and purpose of this exemption to exempt peaches from the requirements of article 17 of chapter 106 that ungraded peaches, when sold or offered for sale, shall be marked "ungraded," "field run," "not graded," "grade not determined" or "unclassified," or words of similar import.) The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five percent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483; 1969, c. 849.)

Editor's Note.—

The 1969 amendment inserted in the first paragraph the sentence reading "This pro-

viso shall not apply to peaches" and the sentence in parentheses relating to ungraded peaches.

ARTICLE 22.

Inspection of Bakeries.

§ 106-225.3. **Unlawful sale of bread, rolls or buns.**—(a) No loaves of bread, rolls, or buns shall be sold or offered for sale for human food which are artificially colored by natural or synthetic dyes, pigments, or other means.

(b) Any person, firm or corporation who shall violate this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in G.S. 106-230. (1969, c. 1121, ss. 1, 2.)

Editor's Note. — Session Laws 1969, c. effective ten days after ratification." The 1121, s. 4, provides: "This act shall become act was ratified June 30, 1969.

ARTICLE 25A.

North Carolina Egg Law.

§ 106-245.16. **Standards, grades and weight classes.**—The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs sold or offered for sale in this State as will protect the consumer and the institutional consumer from eggs which are injurious or likely to be injurious to health by reason of the condition of the shell, or contents thereof,

or by reason of the manner in which eggs are processed, handled, shipped, stored, displayed, sold or offered for sale. Such standards of quality, grades and weight classes as are promulgated and established by the Board shall also promote honesty and fair dealings in the poultry industry. Such standards, grades and weight classes may be modified or altered by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1; 1969, c. 139, s. 1.)

Editor's Note.—The 1969 amendment rewrote this section.

Section 2 of c. 139, Session Laws 1969,

provides that this act shall not apply or affect any pending litigation.

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106-266.6. Definitions.

No Conflict with Federal Law.—There is no conflict between the North Carolina Milk Commission law and regulations and the federal procurement statute, nor is there conflict with the Capper-Volstead Act. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Regulations.—Control over the business of producing or dealing in milk and milk

products is within the police power of the State, and reasonable regulation of the industry does not violate the constitutional right of equal protection. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.7. Milk Commission created; membership; chairman; compensation; quorum; duties of Commissioner of Agriculture and Director of Agricultural Experiment Station.

This section is not unconstitutional in that it provides for a Milk Commission with a majority of its members having a direct and pecuniary interest in the matters with respect to which the Commission must exercise its powers. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

The milk industry is an involved and complicated one, and the administrative regulation of it may best be entrusted to those individuals best equipped through knowledge and experience to perform the task. These individuals most likely will

be found within the industry and not among the public at large. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.8. Powers of Commission.

Regulation of Milk Prices.—The Commission was established as a State agency to protect the interest of the public in a regularly flowing supply of wholesome milk and is authorized, for that purpose, and that purpose only, to regulate, under proper circumstances and to a proper degree, the price of milk. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

The Fourteenth Amendment to the Constitution of the United States does not forbid a state to confer upon an administrative agency the power to fix minimum and maximum retail prices to be charged

for the sale of milk in grocery stores to consumers for the purpose of assuring the steady flow of an adequate supply of clean, wholesome milk from the producing farms to the consumer. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation and Fixing, etc.—

Neither N.C. Const., Art. I, § 7, nor Art. I, § 17, forbids the legislature of this State to confer upon the Milk Commission authority to fix a uniform rate for the transportation of milk from the farm to the processing plant so as to enable the producers of milk to secure a fair price for their

product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation of Competition among Retail Grocery Stores Not Intended.—The Milk Commission was not established as an agency to regulate competition among retail grocery stores per se. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Sections of Milk Marketing Order No. Two Held Constitutional.—Sections IV-

§ 106-266.15. Injunctive relief.

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.17. Appeals.—Any person or persons aggrieved by an order of the Commission refusing a license, to reissue or revoke or suspend a license, to a distributor or producer-distributor or to transfer a license from one person to another, and any order of the Commission applying only to a person or persons, and not otherwise specifically provided for, may be reviewed upon appeal to the superior court. Any person or persons aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought and sold, or any other order, action, rule or regulation of the Commission, may, within forty (40) days after the effective date of such action, rule, regulation or order, appeal therefrom to the superior court. No such appeal shall, in either case, act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before any such person, or persons, shall be allowed to appeal, he shall file written notice of appeal with the Commission and within ten (10) days after the receipt of said written notice of appeal it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of a county in which the violation occurs. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission against (here insert name of appellant)," and said cause shall be placed on the civil issue docket of the superior court of such county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the appellate division of the General Court of Justice. (1953, c. 1338, s. 12; 1969, c. 44, s. 67.)

Editor's Note.—The 1969 amendment substituted "appellate division of the General Court of Justice" for "Supreme Court of North Carolina" at the end of the section.

Right of Appeal and Hearing De Novo.

§ 106-266.21. Sale below cost to injure or destroy competition prohibited.

Constitutionality.—The provisions of this section making proof of the sale of milk by a retailer below cost prima facie evidence of a purpose to injure, harass or destroy competition in the marketing of milk, is not beyond the constitutional power of the

legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).
A-1, IV-B-2, IV-C-1, IV-C-2, IV-E-1A, V-C-2, and V-C-4 of Milk Marketing Order No. Two of the North Carolina Milk Commission were held not to constitute a burden on interstate commerce, conflict with federal regulation of interstate commerce as provided in the Capper-Volstead Act, deny equal protection of the law and due process of law, or impair the obligations of contract. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

—A person aggrieved by a decision of the Commission in North Carolina has a right of appeal and to be heard de novo in the superior court. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Section Must Be Construed in Light of Purpose of Act.—The purpose of the act creating the Milk Commission was to pro-

tect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. This section, though added to the original act by an amendment at a subsequent session, must be construed in the light of that purpose. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Affidavits as to Legislature's Purpose Are Incompetent. — Affidavits purporting to show that it was the purpose of the legislature to prevent the use of milk by grocery stores as a "loss leader" are not competent for that purpose and must be disregarded. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Section is Designed to Prevent Destruction of Competition in Handling Milk. — It is the destruction of competition in the handling of milk, not in the grocery business generally, which this section was designed to prevent. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Not to Make Milk Commission Guardian for Retail Grocery Business. — The Milk Commission is not to be deemed a legislatively appointed guardian for the retail grocery business, and this section is not to be given a construction leading to such result. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Or to Protect Retail Grocery Stores from Use of Milk as "Loss Leader." — The public interest sought to be protected by this section is the public's interest in the regular flow of an adequate supply of wholesome milk from the producer to the consumer, not a possible public interest in the protection of retail grocery stores from the use by other retail grocery stores of milk as a "loss leader." State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Courts Cannot Find That Sale of Milk below Cost Endangers Public Interest. — There is no reasonable basis for a finding by the courts that a sale of milk by a retail grocery store at less than the cost of the milk to it will endanger the public's interest in an adequate flow of wholesome milk, nothing else appearing. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

This section does not make a sale of milk below cost in and of itself a violation of the law. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Selling milk below cost by a defendant grocery chain, not to monopolize the business of selling milk in grocery stores or elsewhere, but to attract customers to its stores in the hope that they would purchase there other items in sufficient volume to yield the defendant a profit from its entire operation, was not a violation of this section. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Evil Purpose Is Essential Element of Offense. — The conduct prohibited by this section is the sale of milk, as defined in § 106-266.6, below cost, as defined in this section, coupled with the purpose on the part of the seller to injure, harass or destroy competition in the marketing of milk. The evil motive or purpose is an essential element of the offense, as truly as is the sale of milk below cost. There is no violation of this statute unless both elements concur. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Such Purpose Is Intent to Eliminate Rival or Achieve Monopoly. — The purpose required to establish a violation of this section is more than a mere intent to attract customers from those who are actual or potential customers of a rival. The intent or purpose required is a malevolent purpose to eliminate a rival or so hamper him as to achieve, or approach, a monopoly and thus control prices to the harm of the public after the rival is eliminated or crippled. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

And Sale Below Cost Is Only Evidence of Such Purpose. — By virtue of this section, evidence of the sale below cost is evidence of the wrongful purpose, but it is evidence only. Standing alone, it permits but does not compel a finding of the necessary motive or purpose. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Section Is Example of Specific Language Shifting Burden of Proof. — This section provides an example of specific language used by the legislature when it intended to shift the burden of proof to a defendant. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Prima Facie Case from Proof of Such Sale May Be Rebutted. — One charged, either in a civil or in a criminal proceeding, with the violation of this section may rebut the statutory prima facie case, resulting from proof of a sale of milk at less than cost, by proof of any fact from which absence of the evil intent to injure, harass or destroy competition may be rationally inferred. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Circumstances Other Than Those Specified

May Be Proved in Rebuttal.—The provision in this section that the statutory prima facie case of violation may be rebutted by proof of specified circumstances, does not mean that these are the only circumstances which may be relied upon to rebut such prima facie proof of violation. To construe the statute otherwise would raise a serious question as to its constitutionality. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

ARTICLE 31.

North Carolina Seed Law.

§ 106-277.28. Fees for tags, stamps and licenses.

- (1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each, official North Carolina seed analysis tags or stamps and shall attach a tag (or stamp on the seedman's label) to each container holding ten pounds or more of seed; provided, however, that a seed dealer or grower who sells only seed lots originated by his company may request to pay these applicable fees through the reporting system prescribed in subdivision (3) hereof; provided, further, that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.

- (3) A seed dealer or grower who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to report the quantity of seed sold and to pay the fees applicable under G.S. 106-277.28 (1) in lieu of attaching an official North Carolina tag or stamp to each container of seeds weighing ten pounds or more.

Upon granting authority, the Commissioner of Agriculture shall require each seed dealer or grower to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold from each distribution point in the State. Such records shall be available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within ten days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights be false, the Commissioner may revoke the authority to use the reporting system. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture.

In order to guarantee faithful performance with the provisions of this section, each seed dealer or grower, before being granted a permit

to use the reporting system, shall deposit with the Commissioner cash in the amount of five hundred dollars (\$500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars (\$500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, inserted the present first proviso in subdivision (1) and added subdivision (3). As only subdivisions (1) and (3) were affected by the amendment, the rest of the section is not set out.

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock and poultry quarantine.—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock and poultry from any state where there is known to prevail contagious or infectious diseases among the livestock and poultry of such state. (1915, c. 174, s. 1; C. S., s. 4871; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ninety days after ratification, inserted "and ratified May 27, 1969, and made effective poultry" in two places in the section.

§ 106-305. Proclamation of infected feedstuff quarantine.—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man, livestock and poultry. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "and poultry" in the first sentence and substituted "livestock and poultry" for "or livestock" at the end of the second sentence.

§ 106-306. Rules to enforce quarantine.—Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock and poultry in this State. (1915, c. 174, s. 3; C. S., s. 4873; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ninety days after ratification, inserted "and ratified May 27, 1969, and made effective poultry" near the end of the section.

§ 106-307. Violation of proclamation or rules.—Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined not in excess of five hundred dollars (\$500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "not in excess of five hundred dollars (\$500.00)" and "up to six months, or both fined and imprisoned."

§ 106-307.1. **Serums, vaccines, etc., for control of animal diseases.**—The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1.)

Editor's Note.—

The 1969 amendment, ratified May 27, 1969, and made effective ninety days after

ratification, inserted "and poultry" near the end of the first sentence.

§ 106-307.2. **Reports of infectious disease in livestock and poultry to State Veterinarian.**—All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry. (1943, c. 640, s. 2; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective

ninety days after ratification, added "and poultry" at the end of the section.

§ 106-307.3. **Quarantine of infected or inoculated livestock.**—Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease may be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or other organism are subject to quarantine at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer serum or vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, substituted "may" for "shall" near the middle of the first sentence, inserted "other" preceding "organism" and substituted "are subject to

quarantine" for "shall be quarantined by the person inoculating same" in the second sentence and substituted "serum or" for "virus or serum" in the proviso at the end of the section.

§ 106-307.4. **Quarantine of inoculated poultry.**—All poultry that are inoculated with a product containing a living virus or other organism capable of causing disease shall be quarantined at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture. Provided nothing herein contained shall be construed as preventing anyone entitled to administer vaccines under existing laws from continuing to administer same. (1969, c. 606, s. 1.)

Editor's Note.—This section is new with the 1969 act. The section formerly numbered 106-307.4 is now § 106-307.5. Session

Laws 1969, c. 606, s. 3, makes the act effective ninety days after ratification. The act was ratified May 27, 1969.

§ 106-307.5. **Livestock and poultry brought into State.**—All livestock and poultry transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4; 1969, c. 606, s. 1.)

Editor's Note. — Session Laws 1969, c. 606, ratified May 27, 1969, and made effective ninety days after ratification, renumbered this section, which was formerly § 106-307.4. The 1969 act also inserted "and

poultry" near the beginning of the section. The section formerly numbered 106-307.5, and relating to appropriations for control of hog cholera, etc., was eliminated by the 1969 act.

§ 106-307.6. **Violation made misdemeanor.**—Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to G.S. 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall

be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars (\$500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1943, c. 640, s. 6; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, "106-307.5" for "106-307.4" and rewrote ratified May 27, 1969, and made effective the provisions relating to punishment. ninety days after ratification, substituted

Part 3. Hog Cholera.

§ 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.—If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one half of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feed lot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twenty-five dollars (\$25.00) for any grade swine nor more than one hundred dollars (\$100.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals provided, however, that the appraisal may be made by the owner, or his representative, and the State Veterinarian, or his authorized representative, when agreement on the appraised value of the swine can be made; provided, further, that swine which entered the State thirty days or more before developing symptoms of hog cholera may be appraised in the same manner as swine which originate in North Carolina.

For the purposes of this section, "purebred swine" shall mean any swine upon which a certificate of pure breeding has been issued by a purebred swine association, or swine not more than twelve months of age eligible to receive such a certificate. (1963, c. 1084, s. 1; 1967, c. 105; 1969, c. 525, ss. 1, 2.)

Editor's Note.—The 1967 amendment rewrote this section.

The 1969 amendment substituted "one half" for "one third" near the beginning of the second sentence of the first paragraph and increased the maximum compensation in that paragraph from \$12.50

for any grade swine and \$25.00 for any purebred swine to \$25.00 for any grade swine and \$100 for any purebred swine. The amendment also added the second paragraph and the two provisos at the end of the first paragraph.

§ 106-322.3. When indemnity payments not to be made.—No payments shall be made for any swine slaughtered in the following cases:

- (1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;

- (2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;
- (3) For swine in a herd in which hog cholera vaccine has been used illegally on one or more animals in the herd;
- (4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;
- (5) Swine belonging to the United States or the State of North Carolina;
- (6) Swine brought into the State in violation of State laws or regulations;
- (7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;
- (8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;
- (9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;
- (10) Where the owner has failed to submit the reports required by the United States and North Carolina Departments of Agriculture for animals on which indemnity is paid under article 34;
- (11) Swine purchased by a buying station for slaughter which are not slaughtered within ten days of purchase. (1969, c. 525, s. 2½.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease.—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and paratuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and paratuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twenty-five dollars (\$25.00) for any grade animal nor more than one hundred dollars (\$100.00) for any purebred animal; provided further, that the State indemnity shall not be in excess of the indemnity payments made by the federal government. In the case of horses or mules destroyed for glanders to pay one half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2; 1969, c. 525, s. 3.)

Editor's Note. — The 1969 amendment increased the maximum indemnity payments from \$12.50 for any grade animal and \$25.00 for any purebred animal to

\$25.00 for any grade animal and \$100.00 for any purebred animal. The amendment also added the second proviso to the first sentence.

Part 7. Rabies.

§ 106-381. Confinement or leashing of vicious animals.

Evidence Insufficient to Show Dog "Vicious"—Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles is not sufficient to justify classifying him as a "vicious" animal and does not make him "a menace to the public health." *Sink v. Moore*, 267 N.C. 344, 148 S.E.2d 265 (1966).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain in possession of the field of battle "whence all but him had fled," is not evidence of a vicious character within the meaning of this section. *Sink v. Moore*, 267 N.C. 344, 148 S.E.2d 265 (1966).

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.—It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1; 1967, c. 511.)

Revision of Part 8.—Session Laws 1967, c. 511, rewrote part 8 of this article, designating the sections therein as §§ 106-388 to 106-398. Prior to the 1967 act this part consisted of §§ 106-388 to 106-399. Session Laws 1967, c. 511, was ratified May 17, 1967, and made effective ninety days after ratification.

§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.—Brucellosis shall mean the disease wherein an animal is infected with *Brucella* organisms (including *Brucella Abortus*, *B. Melitensis* and *B. Suis*), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the *Brucella* organism has been found in the body, its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with § 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live *Brucella* organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.—All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or in some other manner approved by the Commissioner of Agriculture. It shall be the duty of the person who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. It shall be the duty of the person owning said cattle at the time of said testing to assist with and cooperate with the person testing said cattle. Cattle affected with brucellosis shall be quarantined and slaughtered at a State or federally inspected slaughter plant within ten (10) days after branding and tagging; provided the State Veterinarian, in his discretion, may grant an extension of time for said slaughter not to exceed thirty (30) days and; provided further that the Commissioner of Agriculture may allow a branded and tagged animal having unusual

breeding value to be held for a period of time determined by him under conditions of isolation and quarantine prescribed by the State Veterinarian. Animals believed by the State Veterinarian or his authorized representative to have been exposed to brucellosis, or animals classified as suspects, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian until the quarantine is removed in accordance with law or until the animal is disposed of in accordance with law. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian.

All cattle, swine, sheep, goats or other animals subject to infection by *Brucella* organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1174; 1963, c. 489; 1967, c. 511; 1969, c. 465.)

Editor's Note.—The 1969 amendment rewrote the first paragraph.

§ 106-391. Civil liability of vendors.—Any person, or persons, who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

§ 106-392. Sales by nonresidents.—When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-398 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5; 1967, c. 511.)

§ 106-393. Duties of State Veterinarian; quarantine of animals; required testing.—When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

§ 106-394. Cooperation of county boards of commissioners. — The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and United States departments of agriculture in the eradication of brucellosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

§ 106-395. Compulsory testing.—Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in §§ 106-388 to 106-398, the testing of all cattle in said county shall be-

come compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

§ 106-396. Authority to promulgate and enforce rules and regulations.—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-398, and for the effective control and eradication of brucellosis. (1937, c. 175, s. 10; 1967, c. 511.)

§ 106-397. Violation made misdemeanor.—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-398, or any rule or regulation duly established pursuant to this article by the State Board of Agriculture or any inspector who shall wilfully fail to comply with any provisions of §§ 106-388 to 106-398, shall be guilty of a misdemeanor. (1937, c. 175, s. 11; 1967, c. 511.)

§ 106-398. Punishment for sale of animals known to be infected, or under quarantine.—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in §§ 106-388 to 106-398, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), or imprisoned for a term of not less than 30 days or more than two years. (1937, c. 175, s. 12; 1967, c. 511.)

§ 106-399: Repealed by Session Laws 1967, c. 511.

Revision of Part 8.—See same catchline
in note under § 106-388.

Part 9. Control of Livestock Diseases.

§ 106-401.1. Inspection and quarantine of poultry.—The State Veterinarian, or his authorized representative, is hereby authorized to go upon or enter any property in the State, or to stop any motor vehicle, to examine any poultry which he has reason to believe are affected with or exposed to a contagious disease. He or his authorized representative is authorized to quarantine any poultry affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and to give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to or any part of the premises on which such poultry are held. Said poultry are to be maintained by the owner or person in charge as provided for in G.S. 106-400 to G.S. 106-405 at the owner's expense. The quarantine provision hereof shall not apply to those diseases which are endemic in the State and for which adequate preventive and control measures are not available. No poultry under quarantine shall be moved from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and shall not be released or cancelled until the sick or dead poultry have been properly disposed of and the premises have been properly cleaned and disinfected. (1969, c. 693, s. 1.)

§ 106-402. Confinement and isolation of diseased animals required.—Any animal, animals or poultry affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal, animals or poultry in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals or poultry not so affected; they shall not have access to any ditch, canal, branch, creek, river,

or other watercourse which passes beyond the premises of the owner or person in charge of said animals or poultry, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3; 1969, c. 693, s. 2.)

Editor's Note. — The 1969 amendment rewrote this section so as to make it applicable to poultry.

§ 106-405. Violation made misdemeanor.—Any person or persons who shall knowingly and willfully violate any provision of G.S. 106-400 to 106-403 shall be guilty of a misdemeanor and punishable by a fine not in excess of five hundred dollars (\$500.00) or imprisonment not in excess of six months, or both fine and imprisonment. (1939, c. 360, s. 6; 1969, c. 693, s. 3.)

Editor's Note. — The 1969 amendment rewrote this section.

Part 10. Feeding Garbage to Swine.

§ 106-405.1. Definitions.

- (1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

(1967, c. 872, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote subdivision (1).

As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

§ 106-405.3. Application for permit.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars (\$25.00) for each permit issued to a garbage feeder under the provisions of this part. The fees provided for in this part shall be used exclusively for the enforcement of this part.

(1967, c. 872, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, increased the fee in subsection (b) from \$1.00 to \$25.00.

As subsections (a) and (c) were not changed by the amendment, they are not set out.

ARTICLE 35.

Public Livestock Markets.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.—Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

- (1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and
- (2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars (\$250.00), two hundred dollars (\$200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars (\$100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall fix the date of a hearing, on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the public livestock market advisory board of the time and place of said hearing, at least 10 days before the date which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the Commissioner finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, the Commissioner shall issue a nontransferable permit to the applicant. If the Commissioner denies the application, the applicant may appeal within 10 days of notice of said denial to the Board of Agriculture which can uphold or reverse the Commissioner. If the Board of Agriculture upholds the Commissioner, the applicant may appeal to the Superior Court of Wake County under the procedures of article 33, chapter 143 of the General Statutes. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-407. Bonds required of operators; exemption of certain market operations.—The Commissioner of Agriculture shall require the owner of each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars (\$5,000.00) nor more than fifty thousand dollars (\$50,000.00), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this article shall not be interpreted to mean any of the following:

- (1) A market where horses and mules exclusively are sold;
- (2) A market that sells only finished livestock to be used for immediate slaughter;
- (3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six months.
- (4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or

private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.—There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise, shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. It shall also be the duty of the members of the Board to meet at least once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards.

The two hundred fifty dollars (\$250.00) permit fee required by this article and the one hundred dollars (\$100.00) annual permit fee required by this article shall be used to defray the expenses incurred by the members of the Board in the performance of their duties and enforcement of this article. No funds of the State of North Carolina shall be used to defray any expenses of the Board. All permit fees and annual renewal fees payable under the provisions of this article shall be paid into the office of the auditor of the Department of Agriculture and shall be kept by said auditor in a separate account and disbursed by him according to the provisions of this article. (1967, c. 894, s. 3.)

Editor's Note.—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.—The permit authorizing the operation of a public livestock market may be revoked by the North Carolina Board of Agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the public livestock market shall have been given 10 days' written notice of the alleged violation and opportunity to be heard relative thereto by the North Carolina Board of Agriculture. Such revocation may be appealed to the superior court under the provisions of article 33 of chapter 143 of the General Statutes.

If any person, firm or corporation shall operate a public livestock market in

violation of the provisions of this article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4.)

Editor's Note.—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.—All public livestock markets operating under this article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin as late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) lasts no longer than one hour. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Veterinarian in writing at least two weeks in advance of the date of change. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5; 1969, c. 983.)

Editor's Note. — The 1967 amendment, to the first sentence of the second paragraph, effective July 1, 1967, rewrote this section.

The 1969 amendment added the proviso

§ 106-409. Removal of cattle from market for slaughter and non-slaughter purposes; identification; permit needed.—No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter, shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughtering establishment for immediate slaughter.

- (2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles cattle for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feed lot operators buying animals for movement to their own feed lots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-410. Removal of swine from market for slaughter and non-slaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment. — No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

- (1) Moved directly to a recognized slaughter establishment for immediate slaughter.
- (2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
- (3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.

Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, without vaccination and under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote all of this section except the last paragraph.

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.—Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this article and the applicable regulations of the Department of Agriculture. It shall be a misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in § 106-409 and § 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc. — No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7; 1967, c. 894, s. 9.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, inserted "or having visible symptoms of" in the first sentence, substituted "an official" for "a" preceding "test" and inserted "written" preceding

"permission" in the second sentence, deleted "and for immediate slaughter only" at the end of the second sentence and inserted the third sentence.

§ 106-413. Sale, etc., of certain diseased animals restricted; application of article; sales by farmers.—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina

and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification. — No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-415. Cost of tests, serums, etc.—The cost of all tests, serums, vaccines and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter, and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, deleted the former first, second and third sentences, relating to fees for permits and the term of permits, and added the second proviso.

§ 106-416. Rules and regulations.—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may be necessary to carry out the provisions of this article. (1941, c. 263, s. 11; 1967, c. 894, s. 13.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, added "The" at the beginning of the section and deleted "hereafter" between "may" and "be."

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this article, shall be guilty of a misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court. A market

operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, made minor changes in punctuation.

§ 106-418. Exemption from health provisions.—The health provisions of this article shall not apply to “no-sale” cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. 12½; 1967, c. 894, s. 15.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted “at a public livestock market by a bona fide farmer who has owned them at least 60 days” for

“by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina.”

ARTICLE 36.

Plant Pests.

§ 106-422. Agents of Board; inspection. — The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this article. (1957, c. 985; 1967, c. 97b.)

Editor's Note. — The 1967 amendment added the last sentence.

ARTICLE 37.

Cotton Grading.

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.—The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The North Carolina Department of Agriculture may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S., s. 4903; 1967, c. 24, s. 27.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, substituted “it” for “they” near the end of the first sentence and “North Carolina Department of Agriculture” for “above institutions”

near the beginning of the second sentence.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

§ 106-427. **County commissioners to cooperate.**—Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904; 1967, c. 24, s. 27.)

Editor's Note. — The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either, or both, of the above-named institutions" near the middle of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

§ 106-428. **Grading done at owner's request; grades as evidence.**—The expert graders employed by the North Carolina Department of Agriculture, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905; 1967, c. 24, s. 27.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either of the above-named institutions" near the beginning of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-434. **Bonds of superintendent, State employees and private warehouse facilities and their employees.** — The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars (\$50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State Warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in § 106-433 (a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to § 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under § 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433 (b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S. s. 4925(d); 1965, c. 1029, s. 5; 1969, c. 844, s. 9.)

Editor's Note.—

The 1969 amendment added the last sentence.

§ 106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision shall be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in G.S. 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose special financial benefit it is established, it is hereby provided that in the eventuality the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, the State Board of Agriculture shall have the power to make such losses on cotton good by repeating for another 12 months selected by it the special levy on ginned cotton, as prescribed in G.S. 106-435 for the two years ending June 30, 1923 and the State Board of Agriculture shall have the power to make good such losses on soybeans, corn, wheat and grain sorghum by levying an assessment of one cent (1¢) per bushel on each bushel of soybeans, corn, wheat, and grain sorghum sold by producers through commercial channels for such period of time as is necessary to pay off said loss. The assessment shall be paid by the producer of the soybeans, corn, wheat and grain sorghum to the collecting handler. The collecting handler shall be any person, firm, corporation or other legal entity who purchases soybeans, corn, wheat or grain sorghum from the producer. The collecting handler shall collect the assessment at the time he first makes any payment or any credit to the producer's account for the soybeans, corn, wheat or grain sorghum. Each collecting handler shall transmit assessment and reports on assessments to the North Carolina Department of Agriculture no later than the tenth day of the month next following the month in which the assessment was or should have been levied. The report which shall be sent to the Department of Agriculture with the assessment shall contain the following information:

- (1) Date of report;
- (2) Reporting period covered by report;
- (3) Name and address of collecting handler;
- (4) Listing of all producers from whom the collecting handler collected the assessment, and total number of bushels of each grain for each producer on which the collecting handler collected the assessment.

Failure of the collecting handler to collect the assessment shall not relieve the collecting handler of his obligation to remit the assessment to the North Carolina Department of Agriculture. Each collecting handler required to make reports pursuant to this article shall maintain such books and records as are required by the Commissioner of Agriculture or his authorized representative, and they shall be available for inspection for at least two years beyond the 12-month period of their applicability. The North Carolina Department of Agriculture shall have authority to make reasonable rules and regulations for the collection of this assessment and for the enforcement of this section. The funds collected pursuant to this section shall be held in the State treasury to the credit of the State warehouse system and shall be a part of the guarantee fund provided for in G.S. 106-435. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10; 1967, c. 560.)

Editor's Note. —

The 1967 amendment rewrote this section.

ARTICLE 40.

*Leaf Tobacco Sales.***§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.**

The very nature of leaf tobacco demands regulation of its sale, as this section recognizes and the decisions of the courts confirm. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

Unfair Trade Regulations Are Subject to Correction by Federal Trade Commission, Not Courts. — The Federal Trade Commission rather than the courts has the expertise, the power, and the implements to explore and correct unfair trade regulations. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

Members Have Technical Representation Through Board.—Under this section, tobacco purchasers are, or may be, members

of a board of trade. To the extent that they are, they have had technical representation through the board of trade. *Roberts v. Fuquay-Varina Tobacco Bd. of Trade*, 405 F.2d 283 (4th Cir. 1968).

By becoming a member of a board a person consents to be bound by its reasonable regulations. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

Regulation adjusting divisions of selling time to establish an equitable market participation did not constitute conspiracy, monopoly, or an unreasonable restraint of trade. *Eagles v. Harriss Sales Corp.*, 368 F.2d 927 (4th Cir. 1966).

ARTICLE 44.

Unfair Practices by Handlers of Farm Products.

§ 106-498. Establishment of financial responsibility before permit issued; bond.—No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the Commissioner of Agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not less than ten thousand dollars (\$10,000.00). The Commissioner of Agriculture may require a new bond or additional bonds when he finds it necessary for the protection of the producer. Such bonds shall be payable to the State in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfillment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or willful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3; 1967, c. 154.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "not less than" for "not to exceed" near the end of the first sentence and deleted "up to the

ten thousand dollar (\$10,000.00) limit" following the word "bonds" in the second sentence.

ARTICLE 49.

Poultry; Hatcheries; Chick Dealers.

§ 106-539. National poultry and turkey improvement plans.—In order to promote the poultry industry of the State, the North Carolina Department of Agriculture is hereby authorized to cooperate with the United States Depart-

ment of Agriculture in the operation of the national poultry and turkey improvement plans. (1945, c. 616, s. 1; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "North Carolina" preceding "Department of Agriculture" where the phrase first appears and substituted "national poultry and turkey improvement plans" for "national poultry improvement plan" at the end of the section.

§ 106-540. Rules and regulations.—After public hearing following 30 days' public notice, the North Carolina Board of Agriculture is hereby authorized to make such regulations as may be necessary to accomplish the following:

- (1) Carry out the provisions of the national poultry and turkey improvement plans.
- (2) Set up minimum standards for the operation of hatcheries.
- (3) Regulate hatching egg dealers, chick dealers, poult dealers, and jobbers.
- (4) Regulate the shipping into this State of baby chicks, turkey poults and hatching eggs.
- (5) Facilitate the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ 106-541. Definitions.—For the purpose of this article, a hatchery shall be defined as any establishment that operates hatchery equipment for the production of baby chicks or poults. A hatching egg dealer, chick dealer or jobber shall mean any person, firm or corporation that buys hatching eggs, baby chicks or turkey poults and sells or offers them for sale. The term "mixed chicks" or "assorted chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed. (1945, c. 616, s. 3; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ 106-542. Hatcheries, chick dealers and others to obtain permit to operate.—No person, firm or corporation shall operate a hatchery and no chick or hatching egg dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled by the Department of Agriculture for violation of this article or the regulations promulgated thereunder by the Board of Agriculture. Any person who is refused a permit or whose permit is revoked may appeal within thirty (30) days of such refusal or revocation to the superior court of the county wherein the hatchery is or is sought to be located. (1945, c. 616, s. 4; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleted "public" preceding "hatchery" and inserted "or hatching egg" in the first sentence, inserted "by the Department of Agriculture" and "by the Board of Agriculture" in the second sentence and substituted "the superior court of the county wherein the hatchery is or is sought to be located" for "any court of competent jurisdiction" at the end of the third sentence.

§ 106-543. Requirements of national poultry and turkey improvement plans must be met.—All baby chicks, turkey poults and hatching eggs produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry and turkey improvement plans as administered by the North Carolina Department of Agriculture and the regulations issued by authority of this article for the control of pullorum disease and other infectious diseases provided that nothing in this article shall require any hatchery to adopt the national poultry improvement plan or national turkey improvement plan. (1945, c. 616, s. 5; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "produced" near the beginning of the section, substituted "national poultry and turkey improvement plans" and "na-

tional poultry improvement plan or national turkey improvement plan" for "national poultry improvement plan" near the

middle and at the end of the section and inserted "and other infectious diseases."

§ 106-544. Shipments from out of State.—All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum and typhoid disease control provided for in this article and the regulations issued by authority of this article, and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin certifying same. (1945, c. 616, s. 6; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "and typhoid" near the middle of the section.

§ 106-545. False advertising.—No hatchery, hatchery dealer, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleting "public" following "No" at the beginning of the section and inserted "hatchery dealer."

§ 106-546. Notice describing grade of chicks to be posted.—All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture describing the grade of chicks approved by the North Carolina Department of Agriculture. (1945, c. 616, s. 8; 1969, c. 464.)

Editor's Note.—The 1969 amendment substituted "or" for "and" near the beginning of the section and inserted "North Carolina" in two places preceding "Department of Agriculture."

§ 106-547. Records to be kept.—Every hatchery, hatching egg dealer, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleted "public" preceding "hatchery" and inserted "hatching egg dealer."

§ 106-548. Fees; quarantine; compulsory testing.—For the purpose of carrying out the provisions of this article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every hatchery a fee not to exceed ten dollars (\$10.00) where the egg capacity is not more than fifty thousand eggs and twenty dollars (\$20.00) where the egg capacity is fifty thousand to one hundred thousand eggs, and thirty dollars (\$30.00) where the egg capacity is over one hundred thousand, provided the fee for hatcheries with egg capacity not exceeding 1,000 eggs may be waived at the discretion of the Commissioner of Agriculture. Chick dealers and jobbers shall pay a fee of three dollars (\$3.00) annually, said fees to be used for the enforcement of this article. The North Carolina Board of Agriculture is authorized to establish fee schedules not in excess of the actual cost thereof for pullorum and other disease testing, and the performance of services such as culling and selecting by Department personnel. When the State Veterinarian receives information or has reason to believe that pullorum disease or fowl typhoid exists in any poultry or that they have been exposed to one of these diseases, he shall promptly cause said poultry to be quarantined on the premises where located. Said poultry or hatching eggs shall not be removed from the premises where quarantined until quarantine has been released by the State Veterinarian or his authorized representative. A permit to move such infected or exposed poultry to immediate slaughter, or to another premise under quarantine, may be issued by the State Veterinarian or his authorized representative.

The Board of Agriculture is empowered to make regulations under which compulsory testing of poultry for pullorum disease or fowl typhoid may be required. (1945, c. 616, s. 10; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ 106-549. **Violation a misdemeanor.**—Any person, firm or corporation who shall wilfully violate any provision of this article or any rule or regulation duly established by authority of this article, shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars (\$500.00) or imprisoned not in excess of six months, or both fined and imprisoned, in the discretion of the court. (1945, c. 616, s. 11; 1969, c. 464.)

Editor's Note. — The 1969 amendment added the provisions as to fine and imprisonment.

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. **Definitions.**—As used in this article, except as otherwise specified, the following terms shall have the meanings stated below:

- (1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:
 - a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
 - b.
 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissioner make such article unfit for human food;
 2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;
 3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;
 4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this article;
 - c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;
 - d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

- e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;
 - f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
 - g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;
 - h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or
 - i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.
- (2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.
 - (3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture.
 - (4) "Board" means the North Carolina Board of Agriculture.
 - (5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.
 - (6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.
 - (7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.
 - (8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).
 - (9) "Firm" means any partnership, association, or other unincorporated business organization.
 - (10) "Intrastate commerce" means commerce within this State.
 - (11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.
 - (12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.
 - (13) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.
 - (14) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by

consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

- a. If its labeling is false or misleading in any particular;
- b. If it is offered for sale under the name of another food;
- c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
- d. If its container is so made, formed, or filled as to be misleading;
- e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this subparagraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;
- f. If any word, statement, or other information required by or under authority of this or the subsequent article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under § 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
- h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under § 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

- j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;
 - k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subparagraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or
 - l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.
- (16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent article.
 - (17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.
 - (18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent article.
 - (19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent article.
 - (20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.
 - (21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.
 - (22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection under this article. (1969, c. 893, s. 1.)

Revision of Article. — Session Laws 1969, c. 893, effective Jan. 1, 1970, repealed former articles 49B, containing sections numbered 106-549.15 through 106-549.28, and 49C, containing sections numbered 106-549.29 through 106-549.48, and enacted present articles 49B and 49C in their place. Former article 49B related to voluntary inspection of meat, meat products and meat by-products, and was codified from Session Laws 1957, c. 1379.

Session Laws 1969, c. 893, s. 25, provides: "This act shall be designated as the 'North Carolina Compulsory Meat Inspection Act'."

Session Laws 1969, c. 893, s. 26, provides, in part: "The provisions of article 12 of chapter 106 which are inconsistent with the provisions of this act shall not apply to any meat or meat food product regulated herein."

§ 106-549.16. Statement of purpose.—Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat

and meat food products, and results in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by North Carolina and the United States as contemplated by this and the subsequent article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this and the subsequent article. (1969, c. 893, s. 2.)

§ 106-549.17. Inspection before slaughter.—For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for. (1969, c. 893, s. 3.)

§ 106-549.18. Inspection; stamping carcass.—For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tax as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof. (1969, c. 893, s. 4.)

Editor's Note.—The word "do," which is out above, appears in the 1969 act, but enclosed in brackets in the section as set would seem to be superfluous.

§ 106-549.19. Application of article; place of inspection. — The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this article is maintained, and such examination and inspection shall be

had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent article. (1969, c. 893, s. 5.)

§ 106-549.20. Inspectors access to businesses.—For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as “North Carolina Department of Agriculture Inspected and Passed” all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as “North Carolina Department of Agriculture Inspected and Condemned” all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6.)

§ 106-549.21. Stamping container or covering; regulation of container.—(a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked “North Carolina Department of Agriculture Inspected and Passed” shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been “North Carolina Department of Agriculture Inspected and Passed” under the provisions of this article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or authorized representative may require, the information required under subdivision (15) of § 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

- (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent article;
- (2) Definitions and standards of identity or composition for articles sub-

ject to this article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or his authorized representative, are permitted.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the Superior Court of Wake County. Such appeal shall be under the provision of article 33 of chapter 143 of the General Statutes. (1969, c. 893, s. 7.)

§ 106-549.22. Rules and regulations of Board.—The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture Inspected and Passed." (1969, c. 893, s. 8.)

§ 106-549.23. Prohibited slaughter, sale, and transportation. — No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals—

- (1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for intrastate commerce, except in compliance with the requirements of this and the subsequent article.
- (2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:
 - a. Any such articles which (i) are capable of use as human food, and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or,

- b. Any articles required to be inspected under this article unless they have been so inspected and passed, or
- c. Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (1969, c. 893, s. 9.)

§ 106-549.24. Prohibited acts regarding certificate.—(a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner or his authorized representative.

(b) No person, firm, or corporation shall

- (1) Forge any official device, mark or certificate;
- (2) Without authorization from the Commissioner or his authorized representative use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;
- (3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;
- (4) Knowingly possess, without promptly notifying the Commissioner or his authorized representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;
- (5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board;
- (6) Knowingly represent that any article has been inspected and passed, or exempted, under this article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1969, c. 893, s. 10.)

§ 106-549.25. Slaughter, sale and transporation of equine carcasses.—No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11.)

§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.—The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any car-

cass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent article, and all inspections and examinations made under this article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000.00) and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000.00) and by imprisonment for not less than one year nor more than three years. (1969, c. 893, s. 12.)

§ 106-549.27. Exemptions from article.—(a) The provisions of this article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

- (1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor
- (2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected

and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. No provision of this article, nor any rule or regulation of the North Carolina Department of Agriculture, shall apply to any person who sells or offers for sale to a consumer in any one calendar year not in excess of two thousand dollars (\$2,000.00) in retail value of any meat food product produced and raised on his own land or land rented by or leased to him. "Person" shall be defined as an individual and shall not include any corporation, partnership, association or cooperative. Records of the type meat food product sold and the amount received from such sale shall be kept for at least two years from the date of sale by the seller and such record shall be open for inspection during regular business hours by representatives of the Department of Agriculture. Meat food products coming under this paragraph may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products while in the freezer locker plant.

(c) In order to accomplish the objectives of this article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars (\$500.00) and imprisonment for not over six months or both fine and imprisonment.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13.)

§ 106-549.28. Regulation of storage of meat.—The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars (\$500.00) and imprisonment for not over six months or both fine and imprisonment. (1969, c. 893, s. 14.)

ARTICLE 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ 106-549.29. North Carolina Department of Agriculture responsible for cooperation.—(a) The North Carolina Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions

of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous article in such a manner as will effectuate the purposes of this and the previous article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The North Carolina Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this and the previous article to pay fifty per centum (50%) of the estimated total cost of the cooperative program.

(c) The North Carolina Department of Agriculture is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of section 301 of said act. (1969, c. 893, s. 15.)

Revision of Article. — Session Laws 1969, c. 893, effective Jan. 1, 1970, repealed former articles 49B, containing sections numbered 106-549.15 through 106-549.28, and 49C, containing sections numbered 106-549.29 through 106-549.48, and enacted present articles 49B and 49C in their place. Former article 49C related to compulsory meat inspection and was codified from Session Laws 1961, c. 719.

Session Laws 1969, c. 893, s. 25, provides: "This act shall be designated as the 'North Carolina Compulsory Meat Inspection Act'."

Session Laws 1969, c. 893, s. 26, provides, in part: "The provisions of article 12 of chapter 106 which are inconsistent with the provisions of this act shall not apply to any meat or meat food product regulated herein."

§ 106-549.29:1: Repealed by Session Laws 1969, c. 893, s. 26, effective January 1, 1970.

§ 106-549.30. **Refusal of Commissioner to inspect and certify meat.**
—The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this and the previous article) refuse to provide, or withdraw, inspection service under article 49B with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under article 49B because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or State court, of (i) any felony, or (ii) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this or the previous article for withdrawal of inspection services under article 49B from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the Commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the appropriate court as provided in § 106-549.33. (1969, c. 893, s. 16.)

§ 106-549.31. **Enforcement against uninspected meat.** — Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed twenty days, pending action under § 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17.)

§ 106-549.32. **Enforcement against condemned meat; appeal.**—(a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this State after such transportation, and that (i) is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this or the previous article, or (ii) is capable of use as human food and is adulterated or misbranded, or (iii) in any other way is in violation of this or the previous article, shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any proper court as provided in § 106-549.33 within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the order be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or animals shall not be sold contrary to the provisions of this or the previous article. Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this or the previous article, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by the authorized representative of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such cases shall be heard by the superior court without a jury, with the right of the aggrieved party to appeal to the Court of Appeals, and all such proceedings shall be at the suit of and in the name of this State. No appeal shall lie from the Court of Appeals.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this or the previous article, or other laws. (1969, c. 893, s. 18.)

§ 106-549.33. **Jurisdiction of superior court.** — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this and the previous article, and shall have jurisdiction in all other kinds of cases arising under this and the previous article, provided however, all prosecu-

tions for criminal violations under this and the previous article shall be in any court having jurisdiction over said violation. (1969, c. 893, s. 19.)

§ 106-549.34. Interference with inspector.—Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous article shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months or both fined and imprisoned. For the purposes of this section, “impede,” “oppose,” and “intimidate,” or “interfere” shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be fined not less than two hundred fifty dollars (\$250.00) or not more than one thousand dollars (\$1,000.00) or imprisoned not less than one year or not more than two years, or both. (1969, c. 893, s. 20.)

§ 106-549.35. Punishment for violation. — (a) Any person, firm, or corporation who violates any provision of this or the previous article or any regulation of the Board for which no other criminal penalty is provided by this or the previous article shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars (\$500.00), or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in § 106-549.15 (1) h, such person, firm or corporation shall be subject to imprisonment for not more than three years or a fine of not more than ten thousand dollars (\$10,000.00) or both: Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this article shall be construed as requiring the Commissioner or his authorized representative to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this article whenever he believes that the public interest will be adequately served by a suitable written notice of warning. (1969, c. 893, s. 21.)

§ 106-549.36. Gathering information; reports required; use of subpoena.—(a) The Commissioner shall also have power—

- (1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;
- (2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Com-

missioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

- (1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in § 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.
- (2) Any of the courts designated in § 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.
- (3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous article or any order of the Commissioner made in pursuance thereof.
- (4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.
- (5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.
- (6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his

privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than six months or by both such fine and imprisonment.

- (1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not more than five hundred dollars (\$500.00) or to imprisonment for a term of not more than six months or to both such fine and imprisonment.
- (2) If any person, firm, or corporation required by this article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for thirty days after notice of such default, such person, firm, or corporation shall forfeit to this State the sum of one hundred dollars (\$100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.
- (3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment, not exceeding six months or by both such fine and imprisonment, in the discretion of the court. (1969, c. 893, s. 22.)

§ 106-549.37. Jurisdiction coterminous with federal law.—The requirements of this article shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in section 408 of said federal act. (1969, c. 893, s. 23.)

§ 106-549.38. Rules and regulations of State Department of Agriculture.—All rules and regulations of the North Carolina Department of Agri-

culture not inconsistent with the provisions of this article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27.)

§ 106-549.39. Hours of inspection; overtime work; fees.—The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of forty hours in any one calendar week or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this and the previous article. (1969, c. 893, s. 27 (a).)

§§ 106-549.40 to 106-549.48: Repealed by Session Laws 1969, c. 893, s. 26, effective January 1, 1970.

Revision of Article.—See same catchline in note to § 106-549.29.

ARTICLE 49D.

Compulsory Poultry Inspection.

§ 106-549.59. Procedure for revocation, suspension or denial of license; hearings; appeals. — In all proceedings for revocation, suspension or denial of the license, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The Commissioner shall give the licensee twenty days' notice in writing and such notice shall specify the charges or reasons for revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearing shall be held at the Department of Agriculture, Raleigh, N.C., unless a different location be agreed upon.

The Commissioner may issue subpoenas to compel the attendance of witnesses, and/or the production of books, papers, records, and/or documents anywhere in the State. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, which may be administered by the Commissioner. Testimony shall be taken in person or by deposition under such rules and regulations as the Commissioner may prescribe. The Commissioner shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, and serve upon the accused a copy of such findings and conclusions.

The revocation or suspension of a license shall be in writing signed by the Commissioner, stating the grounds upon which such order is based, and the aggrieved person shall have the right to appeal from such an order within twenty days after a copy thereof is served upon him to the superior court of the county in which the appellant's establishment is located or to the Superior Court of Wake County. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, it may be confined to a review of the record made at the hearing by the Commissioner.

An appeal shall lie to the appellate division from the judgment of the superior court, as provided in all other civil cases. (1961, c. 875; 1969, c. 44, s. 68.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last paragraph.

§ 106-549.65. **Labelling and marking.** — The Commissioner shall design inspection stamps or tags or paper giblet wrappings and assign establishment numbers to all poultry slaughtering establishments, poultry processing and dressing plants, and any other establishments handling poultry or poultry products, which have been approved and granted State poultry inspection service by the Commissioner, and the stamps or tags or paper giblet wrappings shall contain the words "North Carolina Inspected and Passed," or words of similar import. The carcasses of all poultry slaughtered, together with the usual cuts thereof, and such poultry or products in loose form, encased, packaged, or canned, as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp or tag or paper giblet wrapping and identification number of the slaughterhouse or processing and dressing plant or other establishment handling poultry, poultry products, all in accordance with the rules and regulations adopted by the Board. Such inspection legend shall be applied under the supervision of poultry inspection personnel.

The inspection stamp or tag or paper giblet wrapping shall be designed so as not to be in conflict with inspection stamps of the United States Department of Agriculture.

It is unlawful for any person to put or cause to be put any stamps, tag or paper giblet wrapping in, on or upon the carcass of any poultry or poultry product transported inter-county which has not been inspected according to the provisions of this article. (1961, c. 875; 1963, c. 1029; 1967, c. 1137, s. 1.)

Editor's Note.—

The 1967 amendment added the last paragraph.

§ 106-549.69. **Penalties; stop-sale order.**—Any person who shall violate any of the provisions of this article or the rules and regulations adopted hereunder shall be guilty of a misdemeanor and may be fined or imprisoned, or both, in the discretion of the court.

The Commissioner, or his authorized representative, shall have authority to issue a stop-sale order for any poultry or poultry product which is transported inter-county without having been inspected according to the provisions of this article. Such stop-sale order shall be delivered to the owner, manager or person in charge of any store, market or place of business where such poultry or poultry product is sold, displayed, offered for sale or stored. Any person to whom a stop-sale order has been delivered shall not sell or offer for sale any poultry or poultry product on which such stop-sale order was issued. (1961, c. 875; 1967, c. 1137, s. 2.)

Editor's Note. — The 1967 amendment added the last paragraph.

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-557. **Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least thirty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one half of one percent of the value of the year's production of such agri-

cultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on volume not to exceed six cents (6¢) per hundredweight of milk sold. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268.)

Editor's Note. — The first 1967 amendment substituted "thirty days" for "sixty days" in the first sentence. The second 1967 amendment added the last sentence.

§ 106-557.1. **Ballot by mail.**—(a) As an alternative method of conducting a referendum under the provisions of this article, the certified agency in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a certified agency determines in its discretion to conduct a mail ballot, public notice of said mail ballot shall be made at least 30 days before the date of said referendum. Said notice shall contain the same information required by G.S. 106-557, except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all persons known by the certified agency to be eligible to vote and that any person not receiving by mail an official ballot by a date specified in the notice will have ten days thereafter to apply for an official ballot at the office of the certified agency. The notice shall state the deadline for the receipt of all ballots and the address of the certified agency.

Official ballots shall be prepared by the certified agency and mailed by first class mail to the last known address of all persons known by the certified agency to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than ten days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

Before any person shall receive an official ballot, he shall furnish such proof as the certified agency may require of his eligibility to vote in said referendum. The certified agency shall keep a list of those persons who receive official ballots. No person may receive more than one official ballot unless he satisfies the certified agency that his ballot has been lost or destroyed.

No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the certified agency at the place and by the deadline previously announced in the public notice of said referendum.

(b) The provisions of this section shall not apply to the North Carolina Potato Association and the North Carolina Soybean Association. (1969, c. 111.)

§ 106-559. **Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.**—Any referendum conducted under the provisions of this article may be held either on an area or state-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or state-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion. Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either tri-

ennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc 213, 561.)

Editor's Note.—The first 1967 amendment added the last two sentences. The second 1967 amendment added, at the end of the next-to-last sentence, "or for the years 1969 through 1973, in its discretion."

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents.—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2.)

Editor Note.—The 1967 amendment substituted "thirty days" for "sixty days" in the first sentence.

§ 106-564.1. Alternate method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the 1st day of June of each year following such deduction, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of article 50 of chapter 106 and shall remit the same to the North Carolina Department of Agriculture. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agri-

culture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3.)

Editor's Note. — The 1969 amendment added the second paragraph.

§ 106-564.3. Alternative method for collection of assessments relating to cattle.—As an alternative method for the collection of assessments provided for in article 50 of chapter 106 of the General Statutes, as amended, and as the same relates to all cattle, including those cattle sold for slaughter, upon the request of the duly certified agency of the producers of all cattle, including those which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations, engaged in the buying, selling or handling of cattle in this State, and on and after the date specified in the letter, the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of all cattle bought, acquired or sold. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell any cattle, including cattle for slaughter, without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the 20th day of the following month, be remitted by such purchaser as above described, to the Commissioner of Agriculture of North Carolina, who shall thereupon pay the amount of the assessments to the duly certified agency of the producers of all such cattle entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling all cattle shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176; 1969, c. 184.)

Editor's Note.—Prior to the 1969 amendment this section applied to assessments relating to cattle sold for slaughter. The

amendment provides for assessments on all cattle sold.

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessments shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer. Provided, however, that as to growers or producers of potatoes, apples or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Pro-

vided further, that any farmer or producer of potatoes, apples or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within thirty days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. (1947, c. 1018, s. 18; 1959, c. 311; 1969, c. 605, s. 1.)

Editor's Note. — Session Laws 1969, c. 605, s. 1, inserted "apples" in the second sentence and in the proviso to the third sentence.

Amendment Effective July 1, 1972.—Session Laws 1969, c. 605, s. 2, effective July 1, 1972, will add a last sentence reading as follows:

Provided further that on and after July 1, 1972, as to growers or producers of apples there shall be no right of refund of assessments levied pursuant to the referendum provided for by article 50, chapter 106 of the General Statutes of North Carolina.

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.—In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six (6) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8; 1967, c. 631, s. 1.)

Editor's Note. — The 1967 amendment substituted "six (6) years" for "three (3) years" near the beginning of the section.

§ 106-568.10. Subsequent referenda; continuation of assessment.—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and au-

thority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2.)

Editor's Note. — The 1967 amendment substituted "six years" for "three years" at the end of the first sentence and in two places in the second sentence and substituted "sixth year" for "third year" in the second sentence.

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.18. **Policy as to joint action of farmers.**—It is hereby declared to be in the public interest that the farmers of North Carolina who produce flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

§ 106-568.19. **Policy as to referendum on question of annual assessment.**—For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

§ 106-568.20. **Referendum in 1961 on assessment for next three years.**—During the year 1961 and upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco, including owners of farms on which such tobacco is produced, tenants and sharecroppers, in which referendum said individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years (1962, 1963 and 1964), such amount as may have been theretofore or as may be thereafter determined by the board of directors of Tobacco Associates, Incorporated, but not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. (1959, c. 309, s. 3.)

§ 106-568.21. **Effect of more than one-third vote against assessment in 1961 referendum.**—If in such referendum more than one third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4.)

§ 106-568.22. **Effect of two-thirds vote for assessment in 1961 referendum.**—If in such referendum two thirds or more of the eligible tobacco

farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5.)

§ 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.—The exact date in the said year 1961, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6.)

§ 106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results.—The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in advance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7.)

§ 106-568.25. Question at 1961 referendum.—Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment for the period of three years, 1962, 1963 and 1964, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than one dollar (\$1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8.)

§ 106-568.26. Collection of assessments; custody and use of funds.—In the event two thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

§ 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.—No assesment shall be made pursuant to this article unless same shall receive the affirmative vote of not less than two thirds of the members of the board of directors of Tobacco Associates, Incorporated, including

the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

§ 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.—In the event any referendum authorized by this article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or producer of tobacco, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer or deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11.)

§ 106-568.29. Subsequent referendum after defeat of assessment.—In the event any referendum conducted as provided for in this article shall not be supported by two thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three years or less. If the referendum is carried as provided in this article, then the assessments may be levied and collected as provided in this article. (1959, c. 309, s. 12.)

§ 106-568.30. Referendum as to continuance of assessments approved at prior referendum.—In the event any referendum, held at any time under the provisions of this article, is carried by the vote of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct during the last year of such period another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of whether or not assessments under this article shall be continued for the next ensuing three years. If the referendum is carried as provided in this article, then assessments may be levied and collected as provided in this article. (1959, c. 309, s. 13.)

§ 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.—The treasurer of Tobacco Associates, Incorporated shall, within thirty days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14.)

§ 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.—The board of directors of Tobacco Associates, Incorporated, by a vote (as provided in § 106-568.27 above) is hereby authorized to levy an assessment for the years 1959, 1960 and 1961 on all the flue-cured tobacco acreage in the State of North Carolina in an amount for each said year, as may be determined by said board, up to but not in excess of one dollar (\$1.00) per acre per year in accordance with and pursuant to a referendum and vote of North Carolina flue-cured tobacco growers held in December, 1958; said assessment to be levied and collected just as though said referendum had been held after the adoption of this article, provided that all of the requirements of this article as to the determination of the amount of the assessment and the collection of the assessment are complied

with and provided further that all conditions of this article as to refund upon demand shall be applicable: Provided further that such assessments for the years 1959, 1960 and 1961 shall be in lieu of the amount of ten cents (10¢) per acre, authorized under the provisions of chapter 511 of the Session Laws of 1947. (1959, c. 309, s. 15.)

§ 106-568.33. **Effect of article on prior acts.**—Insofar as the provisions of this article are different from and in conflict with the provisions of chapter 511, Session Laws of 1947 and chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this article shall be in full effect. So long as assessments are made under this article, no assessment shall be made and collected under the provisions of chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

Chapter 108.

Social Services.

Article 1.

Administration.

Part 1. The State Board of Social Services. Sec.

- 108-1. Creation and change of name.
- 108-2. Appointment, term of office, and compensation.
- 108-3. Meetings of Board.
- 108-4. Powers and duties.

Part 2. The Department of Social Services.

- 108-5. Created.
- 108-6. Commissioner.

Part 3. County Boards of Social Services.

- 108-7. Creation.
- 108-8. Size.
- 108-9. Method of appointment.
- 108-10. Term of appointment.
- 108-11. Order of appointment.
- 108-12. Vacancies.
- 108-13. Meetings.
- 108-14. Compensation of members.
- 108-15. Duties and responsibilities.
- 108-16. Inspection of records by members.

Part 4. County Director of Social Services.

- 108-17. Appointment.
- 108-18. Salary.
- 108-19. Duties and responsibilities.

Part 5. Special County Attorneys for Social Service Matters.

- 108-20. Appointment.
- 108-21. Compensation.
- 108-22. Duties and responsibilities.

Article 2.

Programs of Public Assistance.

- 108-23. Creation of programs.
- 108-24. Definitions.

Part 1. Aid to the Aged and Disabled. Sec.

- 108-25. Eligibility requirements.
- 108-26. Determination of disability.
- 108-27. Direct payments for nursing and custodial care.
- 108-28. Limitations on payments.
- 108-29. Creation of claim and lien on property.
- 108-30. Procedure for filing lien.
- 108-31. Effect of filing.
- 108-32. Priority of claim; priority of lien.
- 108-33. Statute of limitations on lien.
- 108-34. Limitations on enforcement.
- 108-35. Notification of lien on termination of assistance.
- 108-36. Enforcement of lien.
- 108-37. Distribution of funds collected.
- 108-37.1. Release of realty from the lien; effect of failure to file release in clerk's office.

Part 2. Aid to Families with Dependent Children.

- 108-38. Eligibility requirements.
- 108-39. Limitations on eligibility.
- 108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments.

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

- 108-40. Application for assistance.
- 108-41. Investigation of applicant.
- 108-42. The granting or denial of assistance.
- 108-43. Reconsideration of grants.
- 108-44. Appeals.

Sec.

- 108-45. Confidentiality of records.
- 108-46. Removal to another county.
- 108-47. Assistance not assignable.
- 108-48. Fraudulent misrepresentation.
- 108-49. Personal representative for mis-managed grants.
- 108-50. Protective and vendor payments.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

- 108-51. Acceptance of grants-in-aid.
- 108-52. Transfer of funds to counties.
- 108-53. Allocation of nonfederal shares.
- 108-54. Determination of county expenditures.
- 108-55. Determination of administrative expenses.
- 108-56. Counties to levy taxes.
- 108-57. Appropriations not to revert.
- 108-58. Equalizing fund.

Part 5. Medical Assistance.

- 108-59. State Fund created.
- 108-60. Payments from Fund.
- 108-61. Acceptance of federal grants.
- 108-61.1. Advisory committee for medical assistance.

Part 6. General Assistance.

- 108-62. Eligibility.
- 108-63. Application procedure.
- 108-64. State funds to counties.
- 108-65. Participation permissive.

Part 7. Foster Home Fund.

Sec.

- 108-66. State Foster Home Fund.

Article 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

- 108-67. Definitions.
- 108-68. Licenses required.
- 108-69. Licensing procedure.
- 108-70. Appeal procedure.
- 108-71. Annual financial reports.
- 108-72. Authorization of individual solicitors.
- 108-73. Exemptions from licensing requirement.
- 108-74. Solicitation for individual livelihood.
- 108-75. Penalties for violations.

Part 2. Licensing of Private Institutions.

- 108-76. Licensing of maternity homes.
- 108-77. Licensing of homes for the aged and infirm.
- 108-78. Licensing of private child-caring institutions.

Part 3. Local Confinement Facilities.

- 108-79. Inspection.
- 108-80. Approval of new facilities.
- 108-81. Failure to provide information.
- 108-82 to 108-86. [Repealed.]

Revision of Chapter. — Session Laws 1969, c. 546, effective July 1, 1969, revised and rewrote this chapter, substituting present §§ 108-1 through 108-81 for former §§ 108-1 through 108-86. No attempt has been

made to point out the changes made by the revision, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the revised chapter.

ARTICLE 1.

Administration.

Part 1. The State Board of Social Services.

§ 108-1. Creation and change of name.—The State Board of Social Services is hereby created as a policy board for the State Department of Social Services and for the county boards of social services as set out in this chapter. In any law of this State or in any rule or regulation, any mention of, or words referring to the State Board of Charities and Public Welfare or to the State Board of Public Welfare shall be deemed to mean the State Board of Social Services, and any mention of or words referring to the State Department of Public Welfare, the Commissioner of Public Welfare, a county board of public welfare, a county department of public welfare, or a county director of public welfare shall be deemed to mean, respectively, the State Department of Social Services, the Commissioner of Social Services, a county board of social services, a county department of social services, and a county director of social services. (1969, c. 546, s. 1; c. 982.)

Editor's Note. — Session Laws 1969, c. 982, effective July 1, 1969, rewrote the second sentence.

§ 108-2. **Appointment, term of office, and compensation.**—(a) The State Board of Social Services shall have seven members who shall be appointed by the Governor to serve terms of six years. They shall serve staggered terms commencing in odd-numbered years, so that two shall be appointed to serve a term beginning on April 1, 1969, and every six years thereafter; two shall be appointed to serve a term beginning on April 1, 1971, and every six years thereafter, and three shall be appointed to serve a term beginning on April 1, 1973, and every six years thereafter. Members of the State Board of Public Welfare in office when this section shall become effective shall serve until the expiration of the term for which they were appointed.

(b) Any vacancy in the Board which may arise shall be filled for the remainder of the term by appointment of the Governor.

(c) Each Governor shall designate one member of the Board to serve as chairman of the Board for so long as the Governor may deem to be desirable. The chairman shall serve during his term until a new chairman is appointed.

(d) The Board shall elect one member to be vice-chairman who shall serve as chairman in the absence of the chairman or if the chairman's position is vacant.

(e) The members of the Board shall receive the per diem allowances, travel expenses and subsistence that is customary for members of State boards and commissions as provided by G.S. 138-5. (1868-9, c. 170, s. 1; Code, s. 2331; Rev., s. 3913; 1909, c. 500; 1917, c. 170, s. 1; C. S., s. 5004; 1937, c. 319, s. 1; 1943, c. 775, s. 1; 1945, c. 43, s. 1; 1963, c. 392; 1969, c. 546, s. 1.)

Editor's Note. — Section 3 of Session provides that the act shall be effective Laws 1969, c. 546, revising this chapter, July 1, 1969.

§ 108-3. **Meetings of Board.**—The Board of Social Services shall meet at least quarterly and whenever called in session by the chairman, or when requested by four or more members. It shall make such rules for the regulation of its own proceedings as it may deem proper. (1868-9, c. 170, s. 2; Code, s. 2332; Rev., ss. 2807, 3914; 1909, c. 899; 1917, c. 170, s. 1; C. S., s. 5005; 1969, c. 546, s. 1.)

§ 108-4. **Powers and duties.**—The Board of Social Services shall have the following powers and duties:

- (1) To appoint, with the approval of the Governor, a qualified person to be the administrative head of the social service programs of the Board and who shall be known as the Commissioner of Social Services.
- (2) To authorize the making of arrangements and contracts with other State agencies or private organizations or units of local governments, whereby such agencies, organizations or units provide services or act as the agents of the Board in providing any of the services authorized by this chapter.
- (3) To authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.
- (4) To adopt policies that may be necessary or desirable for the administration of the programs of public assistance established by federal legislation and by article 2 of this chapter.
- (5) To ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and services to residents and nonresidents of this State.
- (6) To adopt policies to achieve maximum cooperation with other agencies of this State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance attain self-support or self-care.
- (7) To adopt policies for the placement and supervision of dependent and

- delinquent children, and the payment of the necessary costs of foster home care for needy and homeless children as provided by G.S. 108-66.
- (8) To adopt standards for the inspection and licensing of foster homes for children and persons or organizations which receive and place children for adoption.
 - (9) To adopt standards for the inspection and licensing of maternity homes as provided by G.S. 108-76.
 - (10) To adopt standards for the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77.
 - (11) To adopt standards for the inspection and licensing of private child-care institutions as provided by G.S. 108-78.
 - (12) To approve standards for the inspection and operation of jails or local confinement facilities as provided by G.S. 153-51 and part 3 of article 3 of this chapter.
 - (13) To adopt standards for the payment of the costs of necessary day care for minor children of needy families.
 - (14) To adopt standards for the inspection and licensing of nonmedical, privately operated homes and institutions, as provided by G.S. 122-72.
 - (15) To adopt standards for the regulation and licensing of public solicitors as provided by article 3 of this chapter. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

Part 2. The Department of Social Services.

§ 108-5. **Created.**—There is hereby created the State Department of Social Services which shall administer the programs and services created by this article according to federal and State law and under the policies established by the rules and regulations of the State Board of Social Services. (1969, c. 546, s. 1.)

§ 108-6. **Commissioner.**—(a) The position of the Commissioner of Social Services is hereby created. The Commissioner shall be appointed by the State Board of Social Services with the approval of the Governor. The Commissioner's salary shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

(b) The Commissioner of Social Services shall have the following duties and responsibilities:

- (1) To be the executive officer of the State Board of Social Services.
- (2) To act as chief administrator of the State Department of Social Services and provide for the proper and efficient organization and operation of the Department, including the employment of necessary personnel.
- (3) To formulate for the approval of said Board the agreements, rules, regulations, provisions and standards which the Board is authorized to ratify or adopt by G.S. 108-4.
- (4) To administer for said Board those programs for which the Board is authorized by G.S. 108-4 to ratify or adopt agreements, rules, regulations, provisions and standards.
- (5) To study social problems and other matters affecting the well-being of the citizens of North Carolina and to report on such matters to the State Board, including recommendations for action by the Board.
- (6) To prepare and submit, with the approval of the State Board, a biennial report to the Governor, containing a complete description of the activities of the State Department of Social Services during the preceding two years with recommendations for improving the programs administered or supervised by the Department.

- (7) To keep informed concerning new federal programs and changes in existing ones which might benefit the citizens of the State, and to report on such developments to the Board with recommendations for appropriate action by the Board.
- (8) To serve in such other capacities as he may be appointed to serve by virtue of his office.
- (9) To execute contracts and agreements on behalf of the State Board pursuant to the authority of the Board under G.S. 108-4 (2). (1969, c. 546, s. 1.)

Part 3. County Boards of Social Services.

§ 108-7. Creation.—Every county shall have a board of social services which shall establish county policies for the programs established by this chapter in conformity with the rules and regulations of the State Board of Social Services and under the supervision of the State Department of Social Services. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-8. Size.—The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the State Department of Social Services. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-9. Method of appointment.—(a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the State Board of Social Services shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the State Board of Social Services shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular resident superior court judge of the county shall make the selection. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-10. Term of appointment.—Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-11. Order of appointment.—(a) Three-Member Board: The term of the member appointed by the State Board of Social Services shall expire on June 30, 1969, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1971, and every three years thereafter; and the term of the third member shall expire on June 30, 1970, and every three years thereafter.

(b) **Five-Member Board:** Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the State Board of Social Services shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the State Board. Thereafter all appointments shall be for three-year terms.

(c) **Change from Five-Member to Three-Member Board:** The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

- (1) The seat held by the member appointed by the State Board whose term would have expired on June 30, 1971, or triennially thereafter; and
- (2) The seat held by the member appointed by the board of commissioners whose term would have expired on June 30, 1972, or triennially thereafter. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-12. **Vacancies.**—Appointments to fill vacancies shall be made in the manner set out in G.S. 108-9. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108-10. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-13. **Meetings.**—The board of social services of each county shall meet at least once per month or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-14. **Compensation of members.**—Members of the county board of social services may receive a per diem not to exceed ten dollars (\$10.00) and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-15. **Duties and responsibilities.**—The county board of social services shall have the following duties and responsibilities:

- (1) To select the county director of social services according to the merit system rules of the State Personnel Board.
- (2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community.
- (3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services.
- (4) To transmit or present the budgets of the county department of social services for public assistance and administration to the board of county commissioners.
- (5) To have such other duties and responsibilities as the General Assembly or the State Board of Social Services or the board of county commis-

sioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-16. Inspection of records by members.—Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and payments of public assistance authorized by this chapter. No member shall disclose or make public any information which he may acquire by examining such records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

Part 4. County Director of Social Services.

§ 108-17. Appointment. — (a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Board. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by G.S. 153-246. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-18. Salary.—The board of social services of every county shall determine the salary of the director in accordance with the classification plan of the State Personnel Board, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-19. Duties and responsibilities.—The director of social services shall have the following duties and responsibilities:

- (1) To serve as executive officer of the board of social services and act as its secretary.
- (2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Board.
- (3) To administer the programs of public assistance established by this chapter.
- (4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services.
- (5) To act as agent of the State Board of Social Services in relation to work required by the State Board in the county.
- (6) To investigate cases for adoption and to supervise adoptive placements.
- (7) To issue employment certificates to children under the regulations of the State Department of Labor.
- (8) To serve as chief probation officer for judges exercising juvenile jurisdiction in the county if the court does not have personnel available to provide juvenile probation services.

- (9) To supervise children conditionally released from State institutions for juvenile delinquents where courts exercising juvenile jurisdiction do not have personnel for this purpose.
- (10) To supervise boarding homes, rest homes and convalescent homes for aged or infirm persons, under the rules and regulations of the State Board.
- (11) To investigate, prepare, and submit petitions for the sterilization of eligible county residents to the Eugenics Board of North Carolina and to arrange for operations authorized by said Board.
- (12) To assist and cooperate with the Board of Paroles and the Probation Commission and their representatives.
- (13) To keep informed of the condition of persons discharged from hospitals for the mentally ill.
- (14) To investigate reports of child abuse, neglect, injury and illness as authorized by G.S. 14-318.3 and to take appropriate action to protect such children.
- (15) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care. (1917, c. 170, s. 1; 1919, c. 46, §. 3; C. S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

Part 5. Special County Attorneys for Social Service Matters.

§ 108-20. **Appointment.**—With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-21. **Compensation.**—The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county department of social services. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-22. **Duties and responsibilities.**—(a) The special county attorney shall have the following duties and responsibilities:

- (1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters.
- (2) To represent the county, the plaintiff, or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act.
- (3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals.
- (4) To discharge the duties of the county attorney in respect to the lien created by G.S. 108-29, if such duties be assigned to him by the board of county commissioners with the consent and approval of the county attorney.
- (5) To assist the district court prosecutor or superior court solicitor with the preparation and prosecution of criminal cases under article 40 of chapter 14 of the General Statutes, entitled "Protection of the Family."
- (6) To assist the district court prosecutor or superior court solicitor with the preparation and prosecution of proceedings authorized by chapter 49 of the General Statutes, entitled "Bastardy."
- (7) To perform such other duties as may be assigned to him by the board

of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the State Department of Social Services for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties. (1959, c. 1124, ss. 2, 3; 1969, c. 546, s. 1.)

ARTICLE 2.

Programs of Public Assistance.

§ 108-23. **Creation of programs.**—The following programs of public assistance are hereby established, and shall be administered by the county departments of social services under policies adopted by the State Board of Social Services and under the supervision of the State Department of Social Services:

- (1) Aid to the aged and disabled;
- (2) Aid to families with dependent children;
- (3) General assistance;
- (4) Medical assistance, and
- (5) Foster home fund. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-24. **Definitions.**—As used in article 2:

- (1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.
- (2) "Assistance" is money payments, medical care, remedial care, and goods or services, to or for eligible persons.
- (3) "Dependent child" is a person under twenty-one years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support; it shall also include a minor living in a foster-care facility or child-caring institution.
- (4) "Medical assistance" is any program of medical, dental, optometric or other health-related services approved by the State Board of Social Services.
- (5) "Permanently and totally disabled" is a person who has a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.
- (6) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this article.
- (7) "Resident" is a person who has resided continuously within the State of North Carolina for at least one year prior to the date on which application for assistance to him is made with a county department of social services. (1937, c. 288, ss. 4, 32; 1939, c. 395, s. 1; 1949, c. 1038, s. 2; 1951, c. 1098, ss. 3, 4, 5; 1957, c. 100, ss. 1, 2; 1969, c. 546, s. 1.)

Part 1. Aid to the Aged and Disabled.

§ 108-25. **Eligibility requirements.**—Assistance shall be granted to any person who:

- (1) Is sixty-five (65) years of age and older, or is between the ages of eighteen and sixty-five and is permanently and totally disabled;

- (2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the State Board of Social Services;
- (3) Is a resident of North Carolina;
- (4) Shall agree in writing that the amount of assistance granted him under this article shall constitute a lien against his real property or a claim against his estate. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1; 1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, cc. 788, 1085; 1969, c. 546, s. 1.)

§ 108-26. **Determination of disability.**—(a) An applicant between the ages of 18 and 65 seeking assistance under this part must be found to be permanently and totally disabled as defined in G.S. 108-24 by a physician or by a medical review board in his county of residence; such physician or board must submit any findings of disability to the county department of social services for transmittal to the State Department of Social Services.

(b) All applications for assistance as a permanently and totally disabled person shall be reviewed by medical consultants employed by the State Department of Social Services. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the State Board of Social Services. (1963, c. 788; 1969, c. 546, s. 1.)

§ 108-27. **Direct payments for nursing and custodial care.** — (a) The State Department is authorized and empowered to make payments to duly licensed nursing homes or extended care facilities for persons eligible to receive assistance to the aged and disabled when nursing care is found to be essential for such persons by the State Department under the rules and regulations of the State Board of Social Services.

(b) The State Department is authorized and empowered to make payments to family care homes, homes for the aged and intermediate care homes for persons eligible to receive assistance to the aged and disabled when such facilities are found to be essential for such persons by a county department of social services under the rules and regulations of the State Board of Social Services. (1967, c. 1211, s. 2; 1969, c. 546, s. 1.)

§ 108-28. **Limitations on payments.**—No payment of public assistance derived from federal, State or local sources shall be made for the care of any person in a nursing home, home for the aged, family care home, or intermediate care home which is owned or operated in whole or in part by any of the following:

- (1) A member of the State Board of Social Services, of any county board of social services, or of any board of county commissioners;
- (2) An official or employee of the State Department of Social Services or of any county department of social services;
- (3) A spouse of a person designated in subdivisions (1) and (2). (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48; 1967, c. 983; 1969, c. 546, s. 1.)

§ 108-29. **Creation of claim and lien on property.**—There is hereby created a general claim and a lien, enforceable as hereinafter provided, upon the real property of any person who receives assistance to the aged and disabled. The claim and the lien shall be for the total amount of assistance paid to such person from and after October 1, 1951, if the recipient receives assistance as an aged person, or October 1, 1963, if the recipient receives assistance as a permanently

and totally disabled person. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 1.)

Editor's Note. — Session Laws 1969, c. Ray Jennings, Alexander County Attorney, 1165, effective July 1, 1969, rewrote this 7/7/69; Mr. Rom B. Parker, Halifax County Attorney, 7/9/69.

Opinions of Attorney General. — Mr.

§ 108-30. Procedure for filing lien.—After the approval of assistance to an applicant under this part, the county director of social services shall file a statement showing the name of the applicant and the date of approval of the application in the office of the clerk of the superior court in the county of the recipient's residence and in each county where he owns or subsequently owns real property. Such statement shall be filed in the regular lien docket, showing the name of the county filing the statement as claimant or lienor, and the name of the recipient as owner or lienee, and it shall be indexed in the name of the lienee in the defendant's, or reverse alphabetical, side of the cross index to civil judgments. The county shall appear as plaintiff, or lienor, in such index. No cross index in the name of the county, or lienor, shall be required. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 2.)

Editor's Note. — Session Laws 1969, c. ceived his first payment of public assistance" in the first sentence. 1165, effective July 1, 1969, substituted "of approval of the application" for "he re-

§ 108-31. Effect of filing.—From the date on which the statement required by G.S. 108-30 is filed, the statement shall be and constitute due notice of a lien against the real property owned by the recipient and lying in the county to the extent of the total amount of assistance given the recipient after the proper date shown in G.S. 108-29. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1.)

Opinions of Attorney General. — Mr. Ray Jennings, Alexander County Attorney, 7/7/69.

§ 108-32. Priority of claim; priority of lien. — (a) The claim created against the estate of the recipient shall have equal priority in order of payment with the sixth class under G.S. 28-105 and shall be subordinate to the debts, expenses, taxes, dues and judgments of the first five classes as provided by G.S. 28-105.

(b) The priority of the lien created on the real property of the recipient shall be determined in accordance with the laws governing priority of liens against real estate; and, if real property of a deceased recipient is sold in a judicial sale, including a sale pursuant to an order made in an action in court to foreclose a lien created by this chapter, an order to foreclose a mortgage or deed of trust, an order of a sale to create assets to pay debts; or if real property of a deceased recipient is sold pursuant to a power of sale contained in a mortgage or deed of trust, or granted by statute with respect to a mortgage or deed of trust; or sold in an execution sale, tax foreclosure sale or any sale pursuant to a court order, the proceeds of the sale, except for an amount necessary to pay funeral expenses but not to exceed the amount specified for the priority of funeral expenses in G.S. 28-105, are to be treated as real property; and the priority of the lien provided for herein is to be determined with respect to such funds as if they were real property.

(c) The board of county commissioners and the county board of social services of the county in which the recipient resides may subordinate such lien to a mortgage or lien created against the property of such recipient for necessary repairs or improvements on the property, whether title to the property is held by the

recipient alone or by the entirety with the recipient's spouse. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, ss. 1, 2; 1957, cc. 1107, 1273; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 3.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

Opinions of Attorney General. — Mr. Rom B. Parker, Halifax County Attorney, 8/27/69.

§ 108-33. **Statute of limitations on lien.**—The lien created by G.S. 108-29 shall continue from the date of filing until satisfied, provided that any such lien which has been filed more than ten years prior to January 1, 1970, and any such lien which shall become ten years old thereafter shall expire unless an additional statement of such lien is filed and properly indexed as required by G.S. 108-30, prior to the date of such expiration; provided further that no action to enforce the lien may be brought more than ten years after the last day on which assistance was paid nor more than three years after the date of the recipient's death. Failure to bring action within such times shall be a complete bar against any recovery and shall extinguish the lien. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 4.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote the first sentence.

Opinions of Attorney General. — Mr. Ira T. Johnston, Ashe County Attorney, 8/26/69.

§ 108-34. **Limitations on enforcement.**—No action to enforce the lien created by G.S. 108-29 may be brought upon any real property as long as the property is being occupied as a homesite by the former recipient or, in the event of his death, by the surviving spouse, by a dependent minor child of the recipient, or by a dependent adult child of the recipient who is incapable of self-support because of a mental or physical disability. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, ss. 1, 2; 1957, cc. 1107, 1273; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1.)

§ 108-35. **Notification of lien on termination of assistance.**—The county department of social services shall, within six months after the termination of an aid to the aged and disabled grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination,

(1) That such recipient does not own, or has not owned since the date of the filing of the lien against such recipient's realty, any real property, nation or from any other information which has come to the attention of the department

(2) That such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars (\$100.00), and

(3) In the case of a termination because of death, that no executor, administrator, collector or other personal representative has been appointed an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department,

(1) That such recipient does own, or has owned since the date of the filing of the lien against such recipient's realty, any property, or

(2) That such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars (\$100.00), or

(3) In case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed,

then the department shall furnish to the county attorney all available information

concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the total amount of aid to the aged and disabled assistance received by the recipient from and after October 1, 1951, in the case of a recipient of aid to the aged, and October 1, 1963, in the case of a recipient of aid to the disabled, by or through the State and the several counties thereof, and the reason for termination of the grant. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

Opinions of Attorney General. — Mr. Ray Jennings, Alexander County Attorney, 7/7/69.

§ 108-36. Enforcement of lien.—Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of assistance does not exceed one hundred dollars (\$100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court. (1951, c. 1019, s. 1; 1955, c. 237, s. 2; 1957, c. 1273; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

Opinions of Attorney General. — Mr. Ira T. Johnston, Ashe County Attorney, 8/26/69.

§ 108-37. Distribution of funds collected.—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid aid to the aged or disabled assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county aid to aged and disabled fund and a report of such deposit made to the State Board of Social Services. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Aid to the Aged and Disabled Fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled; provided, that neither the United States nor the State shall in any instance be chargeable for costs in excess of the sum received by it from the claim. Necessary costs of collection of any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1951, c. 1019, s. 1; 1955, c. 237, s. 3; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

§ 108-37.1. Release of realty from the lien; effect of failure to file release in clerk's office.—The county commissioners are authorized to release a specific tract or parcel of realty from a lien described in this article, before or after the termination of a grant of assistance which is the subject of the lien, based upon any circumstances from which the commissioners are satisfied that the release will result in the largest net recovery for the county, State and federal gov-

ernments, or a net recovery as large as would be made in any other manner. The release shall be by duly executed resolution which shall recite the reasons for the release and the consideration received therefor. The release shall contain a full description of the tract or parcel released and the nature and extent of the interest of the licensee in the property released. The commissioners shall cause the original or a duly executed copy of the original of the release to be filed and indexed in the office of the clerk of superior court in the same place and manner as is required for liens provided for under this article. Whether or not in any case the commissioners have, through inadvertence or otherwise, failed to have the release filed and indexed in the office of the clerk, it is hereby expressly provided that except from the time of the filing and indexing of the release in the clerk's office in the same place and manner as is required for liens provided for under this article, no release of lien provided for herein shall be valid as against any lien creditor, except one whose lien is one released as herein provided, or as against any purchaser for a valuable consideration, whose lien or interest or claim of lien or interest in the property released would be nullified, adversely affected, or diminished by the release. (1969, c. 1216, s. 1.)

Editor's Note. — Session Laws 1969, c. 1216, s. 3, makes the act effective July 1, 1969.

Part 2. Aid to Families with Dependent Children.

§ 108-38. Eligibility requirements.—Assistance shall be granted to any dependent child, as defined in G.S. 108-24, who:

- (1) Is a resident of the State or whose mother was a resident when the child was born;
- (2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;
- (3) Has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660; 1969, c. 546, s. 1.)

Editor's Note.—For note on illegitimacy "substitute parent" rule in determining eligibility for aid to dependent children, see 47 N.C.L. Rev. 228 (1968).

For note on the "man in the house" or

§ 108-39. Limitations on eligibility. — (a) No assistance shall be granted to any dependent child who:

- (1) Has passed his sixteenth birthday and has the ability and capacity for gainful employment, unless he is regularly enrolled and attending school or unless no gainful employment is available, except that a dependent child over sixteen years of age and attending school is not eligible for assistance during the summer months unless no gainful employment is available;
- (2) Has passed his eighteenth birthday unless he is regularly attending and successfully pursuing (i) a course of study leading to a high school diploma or its equivalent, (ii) a course of study at the college level, or (iii) a course of vocational or technical training designed to fit him for gainful employment.

(b) No parent shall be made the payee of assistance granted under this part who has the ability and capacity for gainful employment but who is not employed either on a part or full-time basis unless the parent is needed in the home to provide continuous care for or supervision over the child in the home or an incapacitated member in the household, or unless no gainful employment is available.

(c) Any child or parent required to engage in gainful employment but who

cannot obtain such employment shall register with an employment service and make reasonable and continuous efforts to find gainful employment and provide such proof of his registration and efforts as the county department of social services may require. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2; 1969, c. 546, s. 1.)

§ 108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments.

—(a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that it is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) In accordance with the provisions of Title IV of the Federal Social Security Act, the Governor shall appoint the members of, and designate the chairman of, at least one panel to be designated special work projects panel. The Governor may create as many such panels as in his judgment are necessary and the members shall serve at his pleasure. The panels shall review applications tentatively approved by the Secretary of Labor for the special work projects to be established by the Secretary of Labor under the program established by section 432 (b) (3) of Title IV of the Social Security Act. Each panel shall consist of not more than five and not less than three members. The members shall include one representative of employers and one representative of employees, and the remainder shall be representatives of the general public. No special work project under a program developed by the Secretary pursuant to an agreement under section 433 (e) (1) of the Social Security Act shall be established or maintained under such program unless the project has first been approved by a panel created under this section.

(e) The times, frequency, places and duration of the meetings of the panels shall be as required by the Governor, except as modified by authority delegated by the Governor to the panels or their chairmen. Compensation of the panel members shall be in accordance with the provisions of G.S. 108-35 as in the case of other boards and committees.

(f) The Governor may enter into agreements with the United States Secretary of Labor for the creation and operation of the panels. The agreements and the provisions of this section shall be in accordance with and subject to the lawful requirements of the Secretary of Labor in accordance with the Social Security Act.

(g) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with the rules and regulations of the State Board of Social Services, which rules and regulations shall be subject to the lawful requirements of the Secretary of Labor. (1969, c. 739, s. 2.)

Editor's Note. — Session Laws 1969, c. 739, s. 1, provides: "This act shall be known as the Public Welfare Work Incentive Program Act of 1969." Session Laws 1969, c. 739, s. 4, makes the act effective July 1, 1969.

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-40. **Application for assistance.**—Any person who believes that he or another person is eligible to receive aid to the aged and disabled or aid to families with dependent children may submit an application for assistance to the county department of social services. It shall be made in such form and shall contain such information as the State Board of Social Services may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-41. **Investigation of applicant.**—Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for assistance and to obtain such other information as the State Department of Social Services may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-42. **The granting or denial of assistance.** — (a) The county director of social services shall submit his findings and recommendations on each application for aid to the aged and disabled and aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case, except that the disability factor of applications for aid to the disabled shall be finally determined by the State Department of Social Services as provided in G.S. 108-26.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any grant approved by the county board of social services. The recipient of a disputed grant shall receive notice of the time and place of such review. If the board of commissioners deems that a grant was improperly allowed under the policies of the State Board of Social Services, it may order that proper action be taken. The board of commissioners shall notify the recipient, the county director of social services, and the State Department of Social Services of any changes it may make in reviewing assistance grants.

(d) All rules and regulations of the State Board of Social Services which govern eligibility for public assistance from State appropriations or the amount of public assistance grants shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1937, c. 288, ss. 15, 16, 45, 46; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-43. **Reconsideration of grants.**—All grants of public assistance shall be reconsidered as frequently as required by the rules of the State Board. Whenever the condition of any recipient has changed to the extent that his award must be modified or terminated, the county director may make the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting. Prompt notice of all changes shall be given to the recipient, to the State Board, and to the board of county commissioners. (1937, c. 288, ss. 19, 49; 1969, c. 546, s. 1.)

§ 108-44. **Appeals.**—(a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting or denying assistance, or modifying the amount of assistance, or the failure of the county board of social services to act

within a reasonable time under the rules and regulations of the State Board of Social Services, to the Commissioner of Social Services. Each applicant or recipient shall be notified of this right to appeal when applying for assistance and upon any subsequent action of the county board on his case. An applicant or recipient may give notice of appeal by written notice to the county department of social services or through verbal notice to personnel employed by said county department.

(b) If there is such an appeal, the county director shall notify the State Department of Social Services according to the rules and regulations of the State Board of Social Services, and the State Department shall designate a hearing officer who shall promptly hold an appeal hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services.

(c) At the appeal hearing before the hearing officer, the appellant and personnel of the county department of social services shall present such facts as may bear upon the case. After such hearing, the hearing officer shall forward a transcript of the hearing to the State Department of Social Services, to the county department of social services, and to the appellant or his attorney, which transcript or other documents considered at the appeal hearing shall serve as the basis for the Commissioner's decision on such appeal.

(d) The Commissioner of Social Services shall make a decision on such appeal in conformity with federal and State law and the rules and regulations of the State Board of Social Services. The Commissioner shall notify the appellant and the county board of social services of his decision in writing by mail. The decision of the Commissioner on such an appeal shall be binding upon the county board of social services and the board of county commissioners unless there is a petition for court review as provided in (e) herein.

(e) Any appellant or county board of social services who is dissatisfied with the decision of the Commissioner may file a petition within thirty days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the case arose. Such court shall set the matter for a hearing within thirty days after receipt of such petition and after reasonable written notice to the State Department of Social Services, the county board of social services, the board of county commissioners, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law, and under the rules and regulations of the State Board of Social Services. The court may affirm, reverse or modify the order of the Commissioner.

(f) If and when any federal law or regulation requires, as a condition of federal participation in public assistance payments, that public assistance applicants or recipients be furnished with the services of attorneys for the purpose of appeals described in this section or for the purpose of litigation arising out of such appeals, the services of attorneys shall be provided as required by the federal law or regulation, to the extent that funds are made available as hereinafter provided, in accordance with rules and regulations approved by the Governor, the Advisory Budget Commission, the State Board of Social Services and the North Carolina State Bar Council. To the extent permitted by the rules and regulations thus approved, payment for the services of attorneys shall be made by the State Board of Social Services from funds transferred from contingency and emergency appropriations until such time as funds are appropriated for the services of attorneys.

(g) If and when federal laws, or lawful regulations made pursuant to applicable federal laws are enacted requiring that, as a condition for federal participation in the costs of public assistance provided for in this chapter, assistance payments must be continued pending the outcome of a hearing or litigation or informal contact with an assistance recipient, assistance shall be continued in accordance with such

Editor's Note.—Session Laws 1969, c. 735, added subsection (f). Session Laws 1969, c. 754, added subsection (g).

(b) The Department of Social Services shall furnish a complete list of names, addresses, and amounts of monthly grants of all persons receiving payments under all programs of public assistance administered under the supervision of the Department to the auditor of each county at least semiannually. This list shall be a public record open to public inspection during the regular office hours of the county auditor. The list, or any part of it, may not be published in any newspaper or periodical nor used for any commercial or political purpose. Any person so using it or using it for any other purpose not directly connected with the administration of public assistance shall be guilty of a misdemeanor. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; c. 882, ss. 1, 2, 4; 1959, c. 179, ss. 1, 2; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-46. **Removal to another county.**—Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of three months following his move, and thereafter the county to which the recipient has moved shall pay such assistance. (1937, c. 288, ss. 20, 50; 1943, c. 505, ss. 3, 7; 1961, c. 186; 1963, c. 136; 1969, c. 546, s. 1.)

§ 108-47. **Assistance not assignable.**—The assistance granted by this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, ss. 17, 47; 1945, c. 615, s. 1; 1953, c. 213; 1969, c. 546, s. 1.)

§ 108-48. **Fraudulent misrepresentation.**—Any person who wilfully and knowingly, with the intent to deceive, makes a false statement or representation or fails to disclose a material fact in order to enable himself or another person to obtain or to continue to receive assistance to which he is not entitled, is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1937, c. 288, ss. 27, 57; 1963, cc. 1013, 1024, 1062; 1969, c. 546, s. 1.)

82

facts and requesting the appointment of a personal representative to be responsible for receiving such grants and to use them for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing *de novo* without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative. (1959, c. 1239, ss. 1, 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-50. Protective and vendor payments. — Instead of the use of personal representatives provided for by G.S. 108-49, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the State Board of Social Services, which rules and regulations shall be subject to applicable federal laws and regulations. (1963, c. 380; 1969, c. 546, s. 1; c. 747.)

Editor's Note.—Session Laws 1969, c. 747, effective July 1, 1969, rewrote this section.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-51. Acceptance of grants-in-aid. — The State Department of Social Services is hereby authorized to accept all grants-in-aid for the programs of public assistance established under this article which may be available to the State by the federal government under the Social Security Act. The provisions of this article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. (1937, c. 288, ss. 5, 33; 1969, c. 546, s. 1.)

§ 108-52. Transfer of funds to counties.—(a) A State fund for each program of public assistance established under this article is hereby created from the federal and State appropriations to such program. Each State fund shall be drawn out on the warrant of the State Treasurer and issued upon order of the Commissioner of Social Services. Quarterly, or more often if the State Board directs, the Commissioner shall transfer to each county that part of the county's allotment from each State fund that the county is required to disburse for its public assistance programs during the appropriate period. Before transferring such funds, the Commissioner may require that the county certify, through its auditor or fiscal agent, that sufficient county funds are available to pay the county's share of the public assistance expenditures corresponding to the amount of State money to be transferred.

(b) The Commissioner may transfer to any county an amount sufficient to pay in full the grants approved in that county for the first quarter in any fiscal

year. One fourth of this amount shall be advanced in anticipation of the collection of taxes and shall be deducted from future allotments within the same fiscal year to that county.

(c) When the Commissioner finds that the disbursement of funds by a county to qualified recipients is being unduly delayed, or that payments to recipients are jeopardized, he may require that grants be promptly paid as a condition for the allotment or transmission of State monies to the county. State monies may be withheld until the Commissioner is satisfied that the county is paying the grants promptly.

(d) When the State Board of Social Services finds it to be in the public interest to require more adequate protection of funds collected in the county for disbursement to recipients, or the more prompt, efficient and certain payment of grants to recipients, the Commissioner may demand and require that the funds raised by taxation in any county be transmitted to the State Treasurer. The Commissioner shall, in such cases, give notice to the board of county commissioners and to the county officials having such funds in their custody. The board of county commissioners and responsible officials shall immediately transfer all such funds to the State Treasurer for disbursement under rules and regulations established by the State Board of Social Services. (1937, c. 288, ss. 24, 54; c. 405; 1943, c. 505, s. 10; 1969, c. 546, s. 1.)

§ 108-53. Allocation of nonfederal shares.—(a) The nonfederal share of the annual cost of each public assistance program may be divided between the State and the counties in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State.

(b) The nonfederal share of the annual cost of public assistance provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State. The Commissioner shall reserve from State appropriations for public assistance an amount sufficient to pay the county's share of the cost of public assistance to eligible Indian residents of federal reservations, plus related administrative costs incidental to providing such assistance, and shall pay same to counties containing such a federal reservation. (1965, c. 708; 1969, c. 546, s. 1.)

§ 108-54. Determination of county expenditures.—Before March 15 of each year, the director of social services of every county shall compile and submit to the county board of social services an estimate of total funds required to finance each program of public assistance within the county in the next fiscal year on forms furnished by the State Department of Social Services. The county board shall review, modify, and approve such estimate and transmit it before April 1 to the board of county commissioners, which shall review, modify and approve it before April 15 for transmittal to the Commissioner of Social Services. The Commissioner, as agent of the State Board, shall review the estimate submitted by each county and notify the board of county commissioners by June 1 of the adequacy of the county's estimate and of the amount of county funds necessary to support an adequate public assistance budget in the next fiscal year. Upon receipt of such notice, the board of county commissioners shall levy taxes sufficient to provide for the payment of the county's part of such budget. If the board of commissioners disputes the budget recommended by the Commissioner, the State Board of Social Services shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1.)

§ 108-55. Determination of administrative expenses.—The director of social services of each county shall annually compile and submit to the county board of social services an estimate of total funds required to finance the administrative expenses of the social service programs in the next fiscal year. This

estimate shall be prepared before March 15 on forms furnished by the State Department of Social Services. The county board of social services shall review, modify and approve the estimate and transmit it to the board of county commissioners before April 1 for its review, modification and approval. The estimate shall then be forwarded to the Commissioner of Social Services on or before April 15. The Commissioner, as agent of the State Board, shall review the estimate submitted by the county and notify the board of commissioners by June 1 of the adequacy of its estimate and of the amount of county funds necessary to support the social service administrative budget in the subsequent fiscal year. Upon receipt of such notice, the board of commissioners shall levy taxes sufficient to provide for the payment of the county's part of the budget. If the board of commissioners disputes the budget recommended by the Commissioner, the State Board of Social Services shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 23, 53; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1; 1967, c. 898; 1969, c. 546, s. 1.)

§ 108-56. Counties to levy taxes.—(a) Whenever the Commissioner assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the State Board, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) The board of county commissioners may combine any or all of the separate special taxes for each program of public assistance and for the administrative expenses of such programs in place of levying separate special taxes for each item. This consolidated public assistance tax shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of county income and revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance. The appropriations and expenditures for each of the several programs and for administrative expenses shall be separately stated and accounted for. (1937, c. 288, ss. 9, 39; 1969, c. 546, s. 1.)

§ 108-57. Appropriations not to revert. — County appropriations for public assistance expenses or administration shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another if such action appears to be both necessary and feasible, provided the county secures the approval of the Commissioner of Social Services. (1953, c. 891; 1967, c. 554; 1969, c. 546, s. 1.)

§ 108-58. Equalizing fund. — The Commissioner of Social Services is authorized and directed to reserve from State appropriations for the programs of public assistance an amount that he finds to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved, to be known as the equalizing fund, shall be distributed among the counties according to their needs under a formula approved by the State Board of Social Services so as to produce a fair and just distribution. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409; 1969, c. 546, s. 1.)

Part 5. Medical Assistance.

§ 108-59. State Fund created. — To provide for an effective medical assistance program and its administration in North Carolina, the State Board of Social Services is authorized and empowered to establish from federal, State and

county appropriations a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of such Fund in accordance with the provisions of this part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this part, in an amount sufficient to cover each county's share of such assistance. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-60. **Payments from Fund.**—From the Fund established in G.S. 108-59, the State Board of Social Services may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person, when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments from the Fund shall be made only to hospitals licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other personnel authorized by the State Board of Social Services. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-61. **Acceptance of federal grants.**—All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this part within the provisions of the federal Social Security Act. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-61.1. **Advisory committee for medical assistance.**—(a) There shall be established an advisory committee for medical assistance, appointed by the Governor.

(b) The purpose of the committee shall be to advise the State Board of Social Services concerning the purchase of health and medical services as named in this part or that may be approved by the Board pursuant to G.S. 108-24, subdivision (4).

(c) The director of each of the following departments of State government, or his designee, shall be members of the committee: State Commission for the Blind, State Board of Health, Department of Public Instruction, Department of Administration, Department of Mental Health. The terms of these members shall be at the pleasure of the Governor.

(d) One member shall be appointed from each health service provider association or society named in this article whose members are authorized to provide health services for the medical services program created under this part. Each association or society will submit nominees to the Governor.

(e) Five citizens at large, knowledgeable about the health problems of the poor, or about the purchase of health care, shall be appointed to the committee.

(f) Three additional members may be appointed by the Governor if deemed desirable.

(g) From among the provider and citizen members, one third shall be appointed for one-year terms, one third for two-year terms and one third for three-year terms. Subsequent appointments shall be for three-year terms. A chairman and vice-chairman shall be appointed by the Governor.

(h) The committee shall meet at least semiannually and at such other times as may be called by the chairman.

(i) Staff services shall be provided to the committee by the State Department of Social Services. Members who are citizens at large and members who are providers of service shall be paid travel expenses as provided members of State boards and commissions under G.S. 138-5, from funds appropriated to the State Board of Social Services. (1969, c. 1040, s. 1.)

Editor's Note. — Session Laws 1969, c. 1040, s. 3, makes the act effective July 1, 1969.

Part 6. General Assistance.

§ 108-62. **Eligibility.**—Assistance may be granted under this part to any person who is unable to earn a sufficient income and is without sufficient resources to provide a subsistence compatible with decency and health. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-63. **Application procedure.**—(a) Applications under this part shall be made to the county director of social services who, with the approval of the county board of social services and in conformity with the rules and regulations of the State Board of Social Services, shall determine whether assistance shall be granted and the amount of such assistance.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the State Board.

(c) Insofar as available funds permit, assistance under this part shall be sufficient, when added to all other income and resources of the applicant, to provide him a reasonable subsistence compatible with health and decency, in conformity with the principle of equitable treatment among counties set forth in the rules and regulations of the State Board. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-64. **State funds to counties.**—(a) A fund, to be known as the "State General Assistance Fund," shall be created from appropriations made by the General Assembly and from grants of the federal government (when such grants are made available to the State). This Fund shall be used exclusively for assistance to needy persons eligible under this part.

(b) Allotments shall be made annually by the Commissioner of Social Services, as prescribed by G.S. 108-52, to the counties participating in the program established by this part.

(c) The allotments provided by this section shall be used by the counties entitled to them solely as supplementary funds to increase the general assistance being granted. No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-65. **Participation permissive.** — The general assistance program established by this part shall be administered as required by the rules and regulations of the State Board of Social Services, except that no county shall be granted any allotment from the State General Assistance Fund nor be subject to the provisions of this part unless its consent be given in the manner prescribed by the rules and regulations of the State Board. In the event that federal general assistance grants be made available to the State on the condition that all counties participate in such program, however, all of the provisions of this part shall become mandatory upon every county. (1949, c. 1038, s. 2; 1969, c. 546, s. 1.)

Part 7. Foster Home Fund.

§ 108-66. **State Foster Home Fund.**—(a) The General Assembly shall appropriate funds to the State Department of Social Services for the purpose of providing assistance to needy children who are placed in foster homes by county

departments of social services in accordance with the rules and regulations of the State Board. Such appropriations shall be known and designated as the State Foster Home Fund and, together with county contributions for this purpose, shall be expended to provide for the costs of keeping needy children in foster homes.

(b) No needy child shall be eligible for the benefits provided by this section if he be eligible for foster home care benefits provided by part 2 of this article entitled "Aid to Families with Dependent Children." (1937, c. 135, ss. 1, 2, 3; 1955, c. 1044, ss. 1, 2; 1957, c. 100, s. 1; 1969, c. 546, s. 1.)

ARTICLE 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

§ 108-67. **Definitions.**—As used in this part, certain words and phrases shall be defined as follows:

- (1) "Charitable organization" is any person, organization, corporation, institution, association, agency or copartnership which is or purports to be a charitable, benevolent, health, educational, religious, patriotic or other similar public cause or an organization to alleviate cruelty toward animals.
- (2) "Solicitation" is any act of seeking or obtaining, whether by mail, through solicitors, or other means, any of the following benefits: a grant of money or property, including a promise to give any such grant; a gift of goods, wares, merchandise or other items of value; the sale or distribution, or offer for sale or distribution to the public of any item to raise money; the sale of memberships, periodicals, books or advertising space; and the promotion of any public bazaar, sale, entertainment, exhibition or other event to secure money, goods, or property.
- (3) "Solicitor" is any person, organization, corporation, institution, association, agency or copartnership that agrees, for whatever reason, to solicit or collect contributions or other benefits for any charitable organization.
- (4) "Verified financial report" is a report of an audit conducted in accordance with generally accepted auditing standards and containing the expression of an unqualified opinion by an independent certified public accountant. (1969, c. 546, s. 1.)

§ 108-68. **Licenses required.**—No charitable organization, nor any other organization nor person on its behalf, intrastate or foreign, unless exempted by G.S. 108-73, shall solicit benefits from residents of North Carolina unless it has filed a request with the Commissioner of Social Services for a license and is so licensed as provided by this part. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ 108-69. **Licensing procedure.**—(a) Every charitable organization required under this part to secure a license in order to solicit benefits or to authorize solicitations in its behalf shall file a written application with the Commissioner on a form furnished by him. The application shall require proof of the following subjects: the worthiness of the charitable organization's cause or causes; its chartered responsibility; the existence of an adequate, responsible and functioning governing board; its need for public solicitation, and the proposed uses of solicited funds. The applicant shall also file a report summarizing its accomplishments during the preceding fiscal period; a verified financial report for the preceding fiscal period; and a report of the proposed program and objectives, including a budget, for the fiscal period for which the application is filed.

(b) Newly created charitable organizations with no financial history may be

granted a nonrenewable license for one year if, in the judgment of the Commissioner, all requirements for licensing except that of the verified financial report are satisfied.

(c) The State Board of Social Services may adopt standards for the regulation and licensing of certain charitable organizations whose solicitation goals and total contributions received are below specified limits to provide for simplified financial reporting as a prerequisite for licensing.

(d) In considering applications for licensing, the Commissioner shall seek the counsel of any State agency in any cause in which an agency may have an interest or responsibility.

(e) A license shall not be issued to any applicant that pays or agrees to pay an unreasonable or exorbitant amount of the funds collected, as determined by regulations of the State Board of Social Services, for the compensation of solicitors and for expenses incurred in promoting and conducting its fund raising activities and solicitation campaign.

(f) The Commissioner shall issue a license to solicit for a period not to exceed one year, subject to annual renewal, if he finds after full investigation and consideration of the completed application that the causes of the applicant are not harmful to the public interest and that the proposed solicitations are truly for the causes set forth in the application.

(g) The Commissioner may revoke any license before its expiration date if such action would be in the public interest. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ 108-70. Appeal procedure.—An applicant who is refused a license or whose license has been revoked by the Commissioner shall be entitled to a hearing before the Commissioner if a written request for such hearing be made to the Commissioner within fifteen days after notice of refusal or revocation is delivered or mailed to the applicant or licensee. All hearings shall be open to the public. The final decision of the Commissioner on the matter appealed from shall be mailed to the interested parties within ten days after such hearing. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ 108-71. Annual financial reports.—(a) Every licensee under this part shall file a verified financial report with the State Department of Social Services within one hundred and twenty (120) days after the end of each fiscal year. Such verified financial report shall show the licensee's receipts and expenditures on an itemized basis so as to disclose the various purposes for which the licensee solicited and expended funds. Such report shall contain, but not be limited to, details on the costs of raising or securing contributions; the costs of administration, including the organization and operation of new member groups and affiliates within the State; the costs of research pursued by the licensee; and the portion of funds raised in the State and expended inside and outside the State.

(b) No license shall be renewed for any licensee that fails to comply with the provisions of this section. (1967, c. 607; 1969, c. 546, s. 1.)

§ 108-72. Authorization of individual solicitors.—Every person who shall solicit or collect any contribution in money or other property or who shall sell any item for which the proceeds are reserved for and given to a licensee under this part shall have in his possession a written authorization, pledge card, receipt form, or other evidence of authority provided to him by the licensee, and he shall show such authorization upon request. (1939, c. 144, s. 2; 1947, c. 572; 1969, c. 546, s. 1.)

§ 108-73. Exemptions from licensing requirement.—(a) The provisions of this part shall not apply to any solicitation or appeal made by the following organizations:

(1) Any civic, religious, educational, fraternal, or patriotic organization which

confines it solicitation or appeal to its own membership and which does not grant membership to persons who make a contribution as a result of a solicitation or appeal;

- (2) Any church that seeks funds for the construction, upkeep, or maintenance of the church building, clergy's residence or for the support of its clergy;
- (3) Any college holding membership in the North Carolina College Conference and whose governing board makes the solicitation and receives the contributions;
- (4) Any nonpublic high school which is accredited by the State Department of Public Instruction and which offers at least the minimum course of study prescribed by the State Board of Education;
- (5) Any locally indigenous charitable organization which confines its solicitations and operations to the county in which its executive office is located and its governing board resides.

(b) Any charitable organization or other organization that desires to solicit or does solicit the public and claims exemption from the licensing requirements of this part shall file a statement with the Commissioner on forms prescribed by him which shall show proof of its exempted status under this section. The exemption shall be authorized by the Commissioner before such organization may begin or continue to solicit from the public. The claimed exemption shall be subject to annual renewal on forms prescribed by the Commissioner. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990; 1969, c. 546, s. 1.)

§ 108-74. Solicitation for individual livelihood.—(a) It shall be unlawful for any person to engage in the business of soliciting contributions for his own or another person's livelihood, either upon the streets and highways of this State, through door to door solicitation, or through the mails unless he obtains a license for this purpose from the Commissioner of Social Services.

(b) Any person who desires to engage in the business of soliciting contributions under this section shall file a written application for a license on a form furnished by the Commissioner which shall contain his name, his addresses for the past five years, his purpose in seeking to solicit contributions, his reasons for not pursuing another means of livelihood or for not seeking public assistance grants, and such other information as the Commissioner may require. Before issuing a license, the Commissioner shall seek counsel from other interested State agencies. Persons soliciting contributions while carrying merchandise for sale shall not be exempted from the provisions of this section.

(c) A licensee under this section shall carry a copy of his license with him while soliciting contributions and shall show it on request. (1947, c. 572; 1969, c. 546, s. 1.)

§ 108-75. Penalties for violations. — (a) Any solicitor or charitable organization that violates any of the provisions of this part shall be guilty of a misdemeanor. Upon conviction, the court shall commit an individual violator to prison for a term not to exceed six months; corporate violators shall be fined not more than five hundred dollars (\$500).

(b) Any licensee under this part that, after conducting a solicitation campaign and obtaining funds from such solicitation, shall wilfully convert or misapply any of such funds in a manner contrary to the purposes set forth in its application for licensing shall be guilty of a felony and be punished in the discretion of the court. (1939, c. 144, s. 3; 1947, c. 572; 1969, c. 546, s. 1.)

Part 2. Licensing of Private Institutions.

§ 108-76. Licensing of maternity homes.—(a) The State Department of Social Services shall inspect and license all maternity homes established in the

State under such rules and regulations as the State Board of Social Services may adopt.

(b) Facilities subject to the provisions of this section shall include:

- (1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and
- (2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

§ 108-77. Licensing of homes for the aged and infirm.—(a) The State Department of Social Services shall inspect and license, under the rules and regulations adopted by the State Board of Social Services, all boarding homes, rest homes, and convalescent homes for persons who are aged or are mentally or physically infirm, except those exempted in subsection (c) below. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked for cause earlier by the Commissioner.

(b) Any individual or corporation that shall operate a facility subject to license under this section without such license shall be guilty of a misdemeanor.

(c) Facilities which are exempt from the provisions of this section are as follows:

- (1) Those which care for one person only;
- (2) Those which care for two or more persons, all of whom are related or connected by blood or marriage to the operator of the facility;
- (3) Those which make no charges for care, either directly or indirectly;
- (4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section shall not apply to any institution which is established, maintained or operated by any unit of government; any commercial inn or hotel; or any facility licensed by the State Board of Health under the provisions of G.S. 130-9 (e), entitled "Nursing Homes." (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

§ 108-78. Licensing of private child-caring institutions. — (a) The State Department of Social Services shall inspect and license private child-caring institutions in the State under rules and regulations adopted by the State Board of Social Services, except those child-caring institutions which are exempt under (c) herein.

(b) Licenses granted to private child-caring institutions under this section shall be valid for one year after the date of issuance and may be revoked sooner if the Commissioner finds that the public good or the welfare of the children within any institution is not being properly served.

(c) This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars (\$60,000.00) or more and which is owned or operated by a religious denomination or fraternal order. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss.

1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

Part 3. Local Confinement Facilities.

§ 108-79. **Inspection.**—The State Department of Social Services shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50 (4) to determine compliance with the minimum standards for local confinement facilities adopted by the State Board of Social Services. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-80. **Approval of new facilities.**—The State Department of Social Services shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-81. **Failure to provide information.**—If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the State Department of Social Services any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1.)

§§ 108-82 to 108-86: Repealed by Session Laws 1969, c. 546, s. 1, effective July 1, 1969.

Revision of Chapter.—See same catchline in note at the beginning of this chapter.

Chapter 109.

Bonds.

ARTICLE 5.

Actions on Bonds.

§ 109-34. **Liability and right of action on official bonds.**

Cited in *State ex rel. West v. Ingle*, 269 N.C. 447, 152 S.E.2d 476 (1967).

Chapter 110. Child Welfare.

Article 1A.

Exhibition of Children.

Sec.

110-20.1. Exhibition of certain children prohibited.

Article 2.

Juvenile Services.

110-21. Probation.

110-21.1. [Repealed.]

110-22. Probation conditions; revocation.

110-22.1. [Repealed.]

110-23. Duties and powers of juvenile probation officers.

Sec.

110-24. Detention homes.

110-25. [Repealed.]

110-25.1. [Transferred.]

110-26 to 110-38. [Repealed.]

110-39. [Transferred.]

110-40 to 110-44. [Repealed.]

Article 2A.

Parental Control of Children.

110-44.1. Child under eighteen subject to parents' control.

110-44.2. Exceptions.

110-44.3. No criminal liability created.

110-44.4. Enforcement.

ARTICLE 1.

Child Labor Regulations.

§ 110-2. **Hours of labor.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after seven o'clock in the evening of any day, or after nine o'clock on days when schools are not in session. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962.)

Editor's Note.—The first 1967 amendment deleted the former first proviso, relating to nightwork by girls between 16 and 18 years of age.

The second 1967 amendment deleted the former last proviso to the second sentence, relating to employment of girls between

17 and 18 years of age in motion picture theaters.

The 1969 amendment substituted "seven o'clock" for "six o'clock" and added "or after nine o'clock on days when schools are not in session" in the first sentence.

ARTICLE 1A.

Exhibition of Children.

§ 110-20.1. **Exhibition of certain children prohibited.**—(a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this article shall be a misdemeanor which, upon conviction, shall be punished by a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice to the violator, from any county welfare director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1.)

Editor's Note. — Session Laws 1969, c. 457, s. 3, makes the act effective July 1, 1969.

ARTICLE 2.

Juvenile Services.

§ 110-21. **Probation.**—The county director of social services shall be the chief juvenile probation officer in each county, except that the chief counselor shall be the chief juvenile probation officer in counties where family counselor services are established as provided in G.S. 7A-134. The chief juvenile probation officer shall supervise the work of any persons who provide juvenile probation services.

If there are no family counselor services available in a district, the judges exercising juvenile jurisdiction and the directors of the county social services departments in the district may agree in writing that all persons providing juvenile probation services in the district shall be regular employees of the county social services departments in the district who are administratively responsible to the county director of social services as chief juvenile probation officer in each county. Such written agreement shall provide for uniform practices and procedures in juvenile cases in the district. Upon election or appointment of a judge who was not a party to the agreement, the parties may enter a new agreement as herein

provided. (1919, c. 97, s. 11; C. S., s. 5049; 1947, c. 94; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 633; 1969, c. 911, s. 1.)

Revision of Article.—Session Laws 1969, c. 911, s. 1, rewrote this article, which formerly related to juvenile courts and comprised §§ 110-21 through 110-44, to appear as present §§ 110-21 through 110-24. Historical citations to sections of the former article have been added to similar sections of the article as revised. Provisions as to juvenile jurisdiction of the district court, and procedures applicable to children

therein, are now found in §§ 7A-277 through 7A-289.

Session Laws 1969, c. 911, s. 11, provides: "This act shall be effective January 1, 1970, provided that in those districts where the district court is not yet established, the courts exercising juvenile jurisdiction on the effective date shall continue to exercise juvenile jurisdiction until the district court is established."

§ 110-21.1: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-22. Probation conditions; revocation.—When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

- (1) That the child shall remain on good behavior and not violate any laws;
- (2) That the child attend school regularly;
- (3) That the child not associate with specified persons or be in specified places;
- (4) That the child report to the probation officer as often as required by the probation officer;
- (5) That the child make specified financial restitution or pay a fine;
- (6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by article 23 of chapter 7A. If a child violates the conditions of his probation, such child may be required to appear before the court after notice, and the court may make any disposition of the matter that it might have made when the child was placed on probation. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child. (1919, c. 97, s. 12; C. S., s. 5050; 1969, c. 911, s. 1.)

§ 110-22.1: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-23. Duties and powers of juvenile probation officers.—All juvenile probation officers or family counselors providing services to judges hearing juvenile cases shall have the following powers and duties, as the court may require:

- (1) To secure or arrange for such information concerning a case as the court may require before, during or after the hearing;
- (2) To prepare written reports for the use of the court;
- (3) To appear and testify at court hearings;
- (4) To assume temporary custody of a child when so directed by court order;
- (5) To furnish each child on probation and his parents with a written state-

ment of his conditions of probation, and to consult with the parents, guardian or custodian so that they may help the child comply with his probation;

- (6) To keep informed concerning the conduct and progress of any child on probation or under court supervision through home visits or conferences with the parents, guardian or custodian, and in other ways;
- (7) To see that the conditions of probation are complied with by the child, or to bring any child who violates his probation to the attention of the court;
- (8) To make periodic reports to the court concerning the adjustment of any child on probation or under court supervision;
- (9) To keep such records of his work as the court may require;
- (10) To account for all funds collected from children;
- (11) To have all the powers of a peace officer in the district;
- (12) To provide supervision for a child transferred to his supervision from another court or another state, and to provide supervision for any child released from an institution operated by the North Carolina Board of Juvenile Correction when requested by such Board to do so;
- (13) To have such other duties as the judge may direct. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1; 1969, c. 911, s. 1.)

§ 110-24. Detention homes.—It shall be unlawful for any child coming within the provisions of article 23 of chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except as herein provided.

Children who are alleged or adjudicated to be delinquent or undisciplined and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a juvenile detention home, which shall be separate from any jail, lockup, prison or other adult penal institution. A juvenile detention home shall be located in a building designed to provide secure custody and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A detention home shall be operated as a family home according to the standards applicable to juvenile detention facilities adopted by the State Board of Social Services under G.S. 153-52 and under the supervision of the judges exercising juvenile jurisdiction in the district. Personnel employed in a detention home may be appointed by the unit of government which operates the program, except that such appointments shall be approved by the State Department of Social Services. The program of a detention home shall be designed as far as possible to provide wholesome activities in the best interest of the children placed therein.

If there is no detention home available, the judge may arrange for the care of a child requiring secure custody in a private home, a foster home or in any other available child-care facility. When the judge finds there is a pressing need that a child be held in secure custody and there is no juvenile detention home available to the judge, the judge may order the temporary detention of such child in any section of a local jail which is so arranged that the child cannot converse with, see or be seen by the adult population of the jail while being detained, provided that the jailer or other personnel responsible for administration of the jail shall provide close supervision of any child so detained for the protection of the child. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1; 1967, c. 1207; 1969, c. 911, s. 1.)

Opinions of Attorney General. — The Court Judge, Fifth Judicial District, Honorable Gilbert H. Burnett, District 7/23/69.

§ 110-25: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-25.1: Transferred to § 130-58.1 by Session Laws 1969, c. 911, s. 3.

§§ 110-26 to 110-38: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline
in note under § 110-21.

§ 110-39: Transferred to § 14-316.1 by Session Laws 1969, c. 911, s. 4.

§§ 110-40 to 110-44: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline
in note under § 110-21.

ARTICLE 2A.

Parental Control of Children.

§ 110-44.1. **Child under eighteen subject to parents' control.**—Notwithstanding any other provision of law, any child under 18 years of age, except as provided in §§ 110-44.2 and 110-44.3, shall be subject to the supervision and control of his parents. (1969, c. 1080, s. 1.)

§ 110-44.2. **Exceptions.**—This article shall not apply to any child under the age of 18 who is married or who is serving in the armed forces of the United States, or who has been emancipated. (1969, c. 1080, s. 2.)

§ 110-44.3. **No criminal liability created.**—This article shall not be interpreted to place any criminal liability on a parent for any act of his child 16 years of age or older. (1969, c. 1080, s. 3.)

§ 110-44.4. **Enforcement.**—The provisions of this article may be enforced by the parent, guardian, or person standing in loco parentis to the child by filing a civil action in the district court of the county where the child can be found. Upon the institution of such action by a verified complaint, alleging that the defendant child has left home or has left the place where he has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the child personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the child and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the child to appear the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure or conveyance for the purpose of searching for said child and serving said order and for the purpose of taking custody of the person of said child in order to bring said child before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the child reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the child, or anyone acting in his behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of said child, any district court judge holding court in the county or judicial district where said action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Any aggrieved party may within the time allowed for appeal of civil actions generally appeal to the superior court where trial shall be had without a jury. Appeals from the superior court to the Court of Appeals shall be allowed as in civil actions generally. The district judge issuing the original order or the district judge hearing the matter after answer has been filed, shall also have authority to order that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant child to remain on said person's premises or in said person's home. Failure of any defendant

to comply with the terms of said order or judgment shall be punishable as for contempt. (1969, c. 1080, s. 4.)

ARTICLE 3.

Control over Child-Caring Facilities.

§ 110-49. Permits and licenses must be had by institutions caring for children.—No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of giving full-time care to children or for the purpose of placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Social Services. The said Board shall issue such permit recommending said business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in G.S. 108-78 (c) shall annually procure a license from the State Board of Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1; 1969, cc. 908, 1081.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, rewrote the first sentence of the first paragraph and substituted "G.S. 108-73 (c)" for "§ 108-3, subdivision (5)" in the second paragraph.

The second 1969 amendment, also effective July 1, 1969, corrected a typographical

error in the first amendment by substituting "G.S. 108-78" for "G.S. 108-73" in the second paragraph.

By virtue of Session Laws 1969, c. 982, "State Board of Public Welfare" shall be construed to mean "State Board of Social Services."

ARTICLE 5.

Interstate Compact on Juveniles.

§ 110-58. Execution of compact.

Opinions of Attorney General. — Mrs. Childrens' Services Section, Department of Margaret H. Paris, Supervisor, Family & Social Services, 9/26/69.

Chapter 111.

Commission for the Blind.

Article 1.

Organization and General Duties of Commission.

Sec.

111-1. Commission created; appointment by Governor; chairman.

111-2. Meetings.

111-3. Director.

111-12.4. Transfer of funds.

111-12.5. Reserve and operating capital fund.

111-12.6. Disposition of funds deposited with or transferred to State Treasurer.

Article 2.

Aid to the Needy Blind.

Sec.

111-27.2. Blind vending stand operators; retirement benefits.

111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.

111-34. Advisory committees.

ARTICLE 1.

Organization and General Duties of Commission.

§ 111-1. Commission created; appointment by Governor; chairman.—There is hereby established a State Commission, to be known as the North Carolina State Commission for the Blind, consisting of nine members, to be appointed by the Governor. Three members shall be appointed for terms of one year, three for terms of three years, and three for terms of five years. Upon the expiration of their terms, their successors shall be appointed for terms of five years. Any vacancy arising for any cause other than expiration of a term shall be filled by appointment by the Governor for the unexpired term. The Governor shall designate a chairman from among the membership of the Commission. (1935, c. 53, ss. 1, 2; 1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236; 1969, c. 1255, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

Session Laws 1969, c. 1255, s. 6, provides: "The terms of all incumbent members of

the present State Commission for the Blind shall expire on the effective date of this act." The act was ratified July 2, 1969 and made effective upon ratification.

§ 111-2. Meetings.—The Commission shall meet at such times and places as the Commission may determine, but it shall hold at least one meeting every three months. The chairman shall have authority to call special meetings when he deems it desirable. (1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236; 1969, c. 1255, s. 2.)

Editor's Note. — Session Laws 1969, c. 1255, rewrote this section, which formerly related to the terms of office of the mem-

bers of the Commission. For present provisions as to terms of office, see § 111-1.

§ 111-3. Director.—The Commission shall appoint a director to serve as a chief administrative and executive officer who shall serve at the pleasure of the Commission and shall perform such duties and exercise such powers as the Commission may authorize and direct. The position of director shall be subject to all the provisions of the State Personnel Act. (1969, c. 1255, s. 3.)

Editor's Note. — Session Laws 1969, c. 1255, rewrote this section, which formerly provided for three additional members of the Commission, and their terms of office, and for meetings of the Commission. For

present provisions as to membership and terms of the Commission, see § 111-1. For present provisions as to meetings of the Commission, see § 111-2.

§ 111-12.4. Transfer of funds.—On or before September 1, 1967, any funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind shall be transferred to the State Treasurer to the extent

that such funds in the aggregate exceed the amount of one hundred thousand dollars (\$100,000.00). (1967, c. 1214.)

§ 111-12.5. **Reserve and operating capital fund.**—Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind not exceeding one hundred thousand dollars (\$100,000.00) shall be retained by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization as a reserve and operating capital fund to be expended by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor for its lawful purposes and objectives, under direction and approval of the North Carolina State Commission for the Blind (1967, c. 1214.)

§ 111-12.6. **Disposition of funds deposited with or transferred to State Treasurer.**—All funds required under this article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the North Carolina State Commission for the Blind, and all future net earnings and accumulations of said bureau or its successor, other than the one hundred thousand dollar (\$100,000.00) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the North Carolina State Commission for the Blind. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the North Carolina State Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214.)

ARTICLE 2.

Aid to the Needy Blind.

§ 111-27.2. **Blind vending stand operators; retirement benefits.**—The North Carolina State Commission for the Blind is authorized and empowered to continue and maintain, in its discretion, any existing retirement system providing retirement benefits for blind vending stand operators and to expend funds to provide necessary contributions to any existing retirement system for blind vending stand operators to the extent that the Commission determines such retirement system to be in the best interest of the blind vending stand operators. (1969, c. 1255, s. 4.)

§ 111-28. **Commission authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.**—The North Carolina State Commission for the Blind is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind, to be used in carrying out the provisions of this law.

The North Carolina State Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in §§ 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina State Commission for the Blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in

other states relative to the provision of assistance and services to residents, non-residents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The North Carolina State Commission for the Blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those Departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of chapters 20 and 105 of the General Statutes of this State. (1939, c. 124; 1941, c. 186; 1969, c. 871.)

Notwithstanding the above, the North Carolina State Commission for the Blind is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those Departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of chapters 20 and 105 of the General Statutes of this State. (1939, c. 124; 1941, c. 186; 1969, c. 871.)

Editor's Note. — The 1969 amendment added the last paragraph.

§ 111-34. Advisory committees.—(a) There shall be a blind advisory committee composed of six persons appointed by the Governor who are visually handicapped to the extent of being legally blind. The duty of this committee shall be to advise the Commission on the needs of the citizens of this State who are visually handicapped to the extent of being legally blind.

(b) There shall be a professional advisory committee composed of six persons, three of whom shall be licensed physicians whose practice is limited to ophthalmology and three optometrists appointed by the Governor from recommendations submitted by the Medical Society of North Carolina and the North Carolina State Optometric Society respectively. It shall be the duty of this committee to advise the Commission on matters concerning or pertaining to the procurement, utilization and rendering of professional services by said practitioners to the beneficiaries of the Commission's aid and services.

(c) Of the committees appointed, on each committee two members shall be appointed for a term of three years, two members appointed for a term of two years and two members appointed for a term of one year. At the expiration of the term of any committee member, his successor shall be appointed for a term of three years. The members of these committees shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, may be paid out of moneys available for this purpose. (1969, c. 1255, s. 7.)

Chapter 112.

Confederate Homes and Pensions.

ARTICLE 1.

Confederate Woman's Home.

§ 112-1. **Incorporation and powers of Association.**—Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate Soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1980. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222; 1969, c. 116.)

Editor's Note. — The 1969 amendment substituted "January 1, 1980" for "January 1, 1970" in the second paragraph.

ARTICLE 2.

Pensions.

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-21. **Removal from pension lists of persons eligible for old age assistance.** — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for aid to the aged or disabled under the provisions of chapter 108 of the General Statutes, from and after the first day of June one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for aid to the aged or disabled under the provisions of chapter 108 of the General Statutes without any applications being made by such persons for aid to the aged or disabled as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have

been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of welfare to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amount necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102; 1969, c. 981, ss. 2, 3.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "aid to the aged or disabled" for "old age assistance" and "chapter 108 of the General

Statutes" for "§§ 108-15 to 108-76" near the beginning of the section and in the first sentence of the second paragraph.

Chapter 113.

Conservation and Development.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Article 1.

Organization and Powers.

Sec.

- 113-5.1. Officers.
- 113-12. Heads of divisions, experts and assistants; new divisions; deputy and assistant directors.
- 113-14.1. Promotion of seashore industry and recreation.
- 113-14.2. Seashore Advisory Board.
- 113-15.1. [Repealed.]

Article 1B.

Aviation.

- 113-28.5. Legislative intent.
- 113-28.6. Designation of administering agency.
- 113-28.7. Activities eligible for State aid.
- 113-28.8. Limitations on State financial aid.
- 113-28.9. Sources of State funds.
- 113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds.
- 113-28.11. Receipt of federal grants.
- 113-28.12. Acquisition of land by Department.

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

- 113-29. Policy and plan to be inaugurated by North Carolina Forest Service.

Article 2A.

Forestry Advisory Committee.

- 113-44.1. Forestry Advisory Committee created; officers; meetings.
- 113-44.2. Duties; reports.

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

- 113-95.2. Special big game hunting license.
- 113-95.3. Licenses for disabled veterans.
- 113-96.1. Schedule of licenses.

Article 11.

Miscellaneous Provisions.

- 113-126.1. Killing bear out of season.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

Article 13.

Jurisdiction of Fisheries Agencies.

Sec.

- 113-139. Search warrants.

Article 15.

Regulation of Coastal Fisheries.

- 113-189. Protection of sea turtles and porpoises.

Article 16.

Cultivation of Oysters and Clams.

- 113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.

Article 17.

Administrative Provisions; Regulatory Authority of Board and Department.

- 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.

Article 23A.

Promotion of Coastal Fisheries and Sea- food Industry.

- 113-308. Definitions.
- 113-309. Declaration of policy.
- 113-310. Certain activities not to be deemed illegal or in restraint of trade.
- 113-311. Referendum and assessment declared to be in public interest.
- 113-312. Application to Board for authority to conduct referendum.
- 113-313. Action of Board on application.
- 113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.
- 113-315. Maximum assessment.
- 113-315.1. Arrangements for and management of referendum; expenses.
- 113-315.2. Referendum may be by mail ballot or box ballot; who may vote.
- 113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.
- 113-315.4. Levy and collection of assessment; use of proceeds and other funds.

Sec.

113-315.5. Alternative method for collection of assessment.

113-315.6. Subsequent referendum where assessment defeated.

113-315.7. Subsequent referendum where assessment adopted.

113-315.8. Refund of assessment.

113-315.9. Bond of treasurer or financial officer of agency; audit.

Article 24.**Miscellaneous Transitional Provisions.**

113-322. Certain river designated as commercial fishing waters.

SUBCHAPTER V. OIL AND GAS CONSERVATION.**Article 27.****Oil and Gas Conservation.****Part 2. Provisions Dependent upon Action of Governor.**

Sec.

113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and appellate division.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.**ARTICLE 1.***Organization and Powers.*

§ 113-4. **Board of Conservation and Development.** — The control and management of the Department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of twenty-seven members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45; 1961, c. 197, s. 1; 1965, c. 826, s. 1; 1969, c. 271, s. 1.)

Editor's Note.—

The 1969 amendment substituted "twenty-seven members" for "twenty-four members" at the end of the section.

§ 113-5. **Appointment and terms of office of Board.**—All members of the Board of Conservation and Development shall be appointed by the Governor. The Governor may designate one member of the Board to serve as its chairman. In the event the Governor does not designate a chairman, the Governor shall be chairman. In making appointments to the Board, the Governor shall, as nearly as possible, appoint an equal number of persons interested in conservation, in development and in parks and tourist industry. All present and future members appointed to the Board shall serve at the pleasure of the Governor and until their successors are appointed and qualify. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1; 1953, c. 81; 1957, c. 1428; 1961, c. 197, s. 2; 1965, c. 826, s. 2; 1969, c. 271, s. 2.)

Editor's Note.—

The 1969 amendment rewrote the section.

§ 113-5.1. **Officers.**—The Governor shall appoint a member of the Board to serve as vice-chairman. The chairman, with the advice of the Director, shall appoint a person to be secretary to the Board who need not be a member of the Board.

The chairman shall preside at all meetings of the Board, shall appoint members of the Board to each of the Board's committees and shall designate the chairman of each committee after consultation with the Governor and the Director of the Department. The chairman shall have authority to vote on all matters coming before the Board.

It shall be the duty of the vice-chairman to perform the duties of the chairman in his absence, and he shall perform such other duties as the chairman may direct.

The secretary shall record all votes and shall prepare and keep a permanent

record of the minutes of all meetings of the Board. The secretary shall perform such other duties as the chairman may direct. (1969, c. 271, s. 3.)

§ 113-12. Heads of divisions, experts and assistants; new divisions; deputy and assistant directors.—The Director shall appoint, subject to the approval of the Board, the heads of the divisions and such experts and assistants as may be necessary to enable him to carry on successfully the work of the Department, and may, with the approval of the Board, assign to the heads of the divisions and other appointees such duties as may be deemed appropriate.

The Director, subject to the approval of the Board, shall have authority to establish new divisions within the Department and to appoint deputy directors and assistant directors of the Department. (1925, c. 122, s. 15; 1953, c. 808, s. 3; 1969, c. 271, s. 4.)

Editor's Note.—The 1969 amendment added the second paragraph.

§ 113-14.1. Promotion of seashore industry and recreation.—(a) The Director of the Department of Conservation and Development, after the approval of the Board of Conservation and Development, is authorized to create within the Department of Conservation and Development a division for the purpose as hereinafter set out, and to provide the necessary personnel and equipment for such division. Said division shall be given a suitable name by the Board of Conservation and Development. In the event the Director of Conservation and Development determines that the creation of a new division in the Department of Conservation and Development is not feasible, the powers and duties set out in subsection (b), after the approval of the Board of Conservation and Development, may be delegated by the Director to the administrative head of an existing division of the Department of Conservation and Development.

(b) The following powers are hereby granted to the Director of the Department of Conservation and Development and may be delegated to the administrative head of an existing or new division of the Department as herein authorized:

- (1) Assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas;
- (2) Plan and promote recreational and industrial developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents;
- (3) Coordinate the activities of local governments, agencies of the State and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth;
- (4) Study the development of the seacoast areas and implement policies which will promote the development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast;
- (5) Advise and confer with various interested individuals, organizations and State, federal and local agencies which are interested in development of the seacoast area and use its facilities and efforts in planning, developing, and carrying out overall programs for the development of the area as a whole;
- (6) Act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region;
- (7) Make an annual report to the Board of Conservation and Development;
- (8) Make such reports to the Governor as he may request;
- (9) File such recommendations or suggestions as it may deem proper with other agencies of the State, local or federal governments.

Provided, however, that the provisions of this section and § 113-14.2 shall not be construed as affecting the authority of the Department of Water and Air Resources concerning shore-erosion control or prevention, beach protection, or hurricane protection under G.S. 143-355 or any other provision of law. (1969, c. 1143, ss. 2, 3.)

Editor's Note. — Session Laws 1969, c. 1143, s. 11, makes the act effective July 1, 1969. Section 9 of the act provides, in part: "On the effective day of this act, the records, property, supplies and equipment of the North Carolina Seashore Commission shall be transferred to the Department of Conservation and Development."

§ 113-14.2. Seashore Advisory Board.—(a) There is hereby created the Seashore Advisory Board. The functions and duties of the Board are to study matters and activities related to the duties of the division of the Department of Conservation and Development herein authorized and to make recommendations to the Board of Conservation and Development as to how said division may best carry out its duties and responsibilities. The Advisory Board is to consider all matters which may be referred to it by the Board of Conservation and Development, the Director of Conservation and Development, the Governor, and the General Assembly and it must render a report in writing giving conclusions on each matter so referred. The Advisory Board should make recommendations on all matters which are deemed by it relevant to the duties and responsibilities of the division of Conservation and Development herein authorized. The Advisory Board shall have authority to conduct public hearings on matters which the Board is considering.

(b) The Advisory Board shall consist of 11 members appointed by the Governor to serve at his pleasure, one of whom shall be designated chairman. The persons holding the following positions, or their designated representatives, shall be ex officio members of the Advisory Board: chairman of the Board of Water and Air Resources; chairman of the North Carolina Wildlife Commission; chairman of the State Highway Commission and the Property Control Officer of the Department of Administration. Ex officio members, or their representatives, shall be entitled to vote on all matters coming before the Advisory Board.

(c) At its first meeting the Advisory Board shall elect a vice-chairman who shall be a member of the Board. The vice-chairman shall preside at meetings of the Advisory Board in the absence of the chairman. The Board shall meet upon such a schedule as the Board may adopt. Either the chairman of the Advisory Board or the Director of the Department of Conservation and Development may call special meetings of the Advisory Board.

A quorum for meetings of the Advisory Board shall be eight members.

(d) The members of the Advisory Board while in attendance of meetings or engaged in the business of the Advisory Board shall receive such per diem, travel and subsistence allowance as is paid currently to other State boards or commissions. (1969, c. 1143, ss. 4-7.)

Cross Reference. — See Editor's note under § 113-14.1.

§ 113-15.1: Repealed by Session Laws 1969, c. 1145, s. 4, effective July 1, 1969.

Cross Reference.—As to transfer of Community Planning to the Department of functions, property, etc., of the Division of Local Affairs, see § 143-326.

ARTICLE 1B.

Aviation.

§ 113-28.5. Legislative intent.—It is the declared intention of the General Assembly to authorize, subject to the limitations and conditions of this article, the provision of State aid in the form of loans and grants to the cities, coun-

ties and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county or public authority airport facilities; and to authorize related programs of education, promotion and long-range planning for such facilities. (1967, c. 1006, s. 1.)

Editor's Note. — Session Laws 1967, c. 1006, s. 2, provides: "There is hereby appropriated out of the general fund, to the Department of Conservation and Development, in addition to all other sums appropriated to said Department, for the pur-

pose of carrying out the provisions of this act, the sum of two hundred and fifty thousand dollars (\$250,000.00) for the fiscal year beginning on July 1, 1967 and ending June 30, 1968."

§ 113-28.6. Designation of administering agency.—The Department of Conservation and Development, Commerce and Industry Division, is hereby designated as the State agency to carry out the purposes of this article subject to the general supervisory powers of the Director and the Board of Conservation and Development of the Department. In exercising such powers the Department shall:

- (1) Prepare and develop standards, criteria, and policies for the most efficient and economical expenditure of such State funds as may be appropriated for purposes of this article; including consultation with the State Highway Commission, concerning road and runway construction.
- (2) Publish and make available to aviation interests, the Federal Aviation Agency, and the people of the State generally current information regarding such criteria, standards, and policies.
- (3) Prepare and keep current a State airport plan and submit annual revisions of that plan to the Federal Aviation Agency.
- (4) Make detailed and thorough study of all applications for State assistance authorized herein and make specific recommendations regarding each such application to the Board of Conservation and Development and to the Federal Aviation Agency.
- (5) Recommend annually, or more often if the Department deems necessary, a plan of priorities and allocations of State funds to the Board of Conservation and Development.
- (6) Represent the State before all federal agencies and elsewhere where the aviation interests of the State may be affected.
- (7) Subject to the availability of funds for the purpose, conduct such promotional, educational and other programs as may be necessary to keep the people of the State properly informed with respect to aviation, and to further aeronautics generally throughout the State.
- (8) In exercising the foregoing powers, the Department of Conservation and Development shall consult with and seek the advice of the committee known as "The Governor's Aviation Committee." Such committee shall consist of 11 members appointed by the Governor, who in making such appointments, shall designate one person from each of the congressional districts of the State. The Governor shall designate the chairman. Six members shall be appointed to serve for terms of four years each, and five members shall be appointed to serve for terms of two years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed for terms of four years each. At least four of these members, so appointed, shall possess a broad knowledge of aviation and airport development. All members appointed to the committee shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said committee because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member.

Members of the committee shall meet twice each year and shall receive as compensation for their services seven dollars (\$7.00) for each day actually engaged in the exercise of the duties of the committee and such travel expenses and subsistence allowances as are generally allowed other State Commissions and Boards. (1967, c. 1006, s. 1.)

§ 113-28.7. **Activities eligible for State aid.** — Loans and grants of State funds may be made for the planning, acquisition, construction, or improvement of any airport owned or controlled, or which will be owned and controlled by any city, county or public airport authority acting by itself or jointly with any other city or county. An airport development project or activity eligible for State aid under this article shall also be deemed to include projects, such as air navigation facilities, aviation easements, and the acquisition of land, lighting, marking, or elimination of airport hazards. (1967, c. 1006, s. 1.)

§ 113-28.8. **Limitations on State financial aid.**—Grants and loans of funds authorized by this article shall be subject to the following conditions and limitations;

- (1) Loans and grants may be made for such projects, activities, or facilities as would be in general eligible for approval by the Federal Aviation Agency or its successor agency or agencies in administering the federal aid airport program and/or the national airport plan pursuant to the Federal Airport Act, Public Law 377, 79th Congress, approved May 13, 1946, as amended.
- (2) Loans and grants shall be limited to municipal, county and public authority airports which are, or which would be if constructed according to plans approved by the Federal Aviation Agency, a general purpose noncarrier airport as defined by the Federal Aviation Agency.
- (3) Loans and grants of State funds shall be limited to a maximum of twenty-five percent (25%) of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, that the State may participate in up to fifty percent (50%) of the total cost of land easements, land purchases, runway lights and approach facilities (visual and electronic).
- (4) All loans and grants of State funds made or authorized pursuant to this article shall be subject to the prior approval of the Board of Conservation and Development. (1967, c. 1006, s. 1; 1969, c. 293.)

Editor's Note. — The 1969 amendment added the proviso at the end of subdivision (3).

§ 113-28.9. **Sources of State funds.**—State financial assistance under this article shall be limited to appropriations of funds made for the purpose by the General Assembly to the Department of Conservation and Development, or to private funds which may become available to the Department for such purpose. (1967, c. 1006, s. 1.)

§ 113-28.10. **Acceptance, receipt, accounting, and expenditure of State and federal funds.**—All North Carolina municipalities, counties and public airport authorities are hereby authorized to accept, receive, receipt for, disburse and expend State funds, and other funds, public and private, which may be made available to them to accomplish any purpose of this article. All federal funds accepted and expended by any municipality or county shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the United States and not inconsistent with State law. All State funds accepted by any municipality, county or public airport authority shall be accepted,

accounted for, and expended according to such terms and conditions as may be prescribed by the State Department of Conservation and Development. Unless otherwise prescribed by the federal or State agency from which funds were made available, the chief financial officer of the municipality, county or public airport authority shall deposit all funds received and keep the same in separate funds according to the purpose for which they were received. The accounting of all such funds shall be subject to the municipal and county Fiscal Control Acts. (1967, c. 1006, s. 1.)

Cross Reference.—See Editor's note to § 113-28.5.

§ 113-28.11. Receipt of federal grants.—(a) The North Carolina Department of Conservation and Development is hereby designated as the State agency to accept grants made by the United States, under the "Aviation Facilities Expansion Act of 1969" or any substantially similar federal law. The Department of Conservation and Development shall have authority to disburse said grants in accordance with applicable federal laws and regulations and to enter into contracts with the federal government, municipalities, counties or airport authorities in connection with said grants.

(b) The Department of Conservation and Development shall have authority to act as agent of any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary of Transportation of the United States an application for financial assistance under the provisions of the Aviation Facilities Expansion Act of 1969 or any similar federal act. (1969, c. 1109, ss. 1, 2.)

§ 113-28.12. Acquisition of land by Department.—The Department of Conservation and Development shall also have authority to acquire by purchase, gift, devise, lease, condemnation, or otherwise, any property, real or personal, or any interest therein, including easements, necessary to establish or develop airports. (1969, c. 1109, s. 3.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by North Carolina Forest Service.—The Department of Conservation and Development through the Division of Forestry, to be known and hereafter designated as the North Carolina Forest Service, shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

- (1) The extension of the forest fire prevention organization to all counties in the State needing such protection.
- (2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.
- (3) To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.
- (4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and

clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

- (5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department of Conservation and Development as State demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1; 1969, c. 342, s. 1.)

Editor's Note. — The 1969 amendment known and hereafter designated as the inserted, in the opening paragraph, "to be North Carolina Forest Service."

§ 113-29.1. Growing of timber on unused State lands authorized. —The Department of Administration may allocate to the Department of Conservation and Development, for management as a State forest, any vacant and unappropriated lands, any marsh lands or swamp lands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as Research Stations shall not be subject to the provisions of this section. The Department of Conservation and Development, through the Forest Service, shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Director of Conservation and Development may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Director of Conservation and Development, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Forest Service. (1957, c. 584, s. 1; 1969, c. 342, s. 2.)

Editor's Note. — The 1969 amendment of Forestry" in the third sentence and for substituted "Forest Service" for "Division "Forestry Division" in the last sentence.

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc., operation of public service facilities; concessions to private concerns.—Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. The Department shall have authority to establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules and regulations of the Department of Conservation and Development. When the State Forester determines that a surplus of seedlings or seed exists, this surplus may be sold to other states, agencies of the federal government or recognized research organizations. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such properties of the State and at the courthouse of the county or counties in which such properties are situated shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

- (1) The erection, maintenance and use of docks, piers and such other struc-

tures as may be permitted in or on State lakes under its own regulations;

- (2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Board of Conservation and Development shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2; 1969, c. 343.)

Editor's Note.—

The 1969 amendment rewrote the first paragraph.

ARTICLE 2A.

Forestry Advisory Committee.

§ 113-44.1. Forestry Advisory Committee created; officers; meetings.—(a) There is hereby created the North Carolina Forestry Advisory Committee, hereinafter called "Committee," to be composed of eleven members, all appointed by and to serve at the pleasure of the Governor. Three members shall represent wood-using industries; two members shall represent forest landowners; two members shall represent nontimber forest resource interests; two members shall represent the public; one member shall represent forestry organizations and one member shall represent banking and financial interests. All persons appointed to the Committee shall be persons of practical knowledge in the field they are to represent. Members of the Committee shall serve without compensation.

(b) The Governor shall designate one member of the initial Committee as chairman who shall serve as chairman for one year. Thereafter, yearly, the Committee shall elect its own chairman. The Committee shall select its own vice-chairman who shall serve for a term of one year and who shall preside in the absence of the chairman and perform such other duties as the chairman shall direct. Both the chairman and vice-chairman shall be eligible to serve successive terms. A quorum for any meeting of the Committee shall be seven members. The chairman and vice-chairman may vote on all matters coming before the Committee. The Committee shall select a secretary who need not be a member of the Committee. It shall be the duty of the secretary to keep a permanent written record of the meetings of the Committee.

(c) The Committee shall meet at least twice each year and more often if directed by the Board of Conservation and Development or if at least eight members of the Committee request in writing that the chairman call a meeting. The Committee shall hold all its meetings within the State. (1969, c. 1055, ss. 1, 2.)

§ 113-44.2. Duties; reports.—It shall be the duty of the Committee to advise the Board of Conservation and Development with respect to all matters concerning the conservation and development of both state-owned and privately owned forests in the State. The Committee shall undertake such studies and

make such reports to the Board of Conservation and Development and the Governor as the Board or Governor may direct. In addition, the Committee may make such studies, reports and recommendations to the Board of Conservation and Development and Governor as it shall deem in the interests of the conservation and developments of the forests within the State. (1969, c. 1055, s. 3.)

ARTICLE 4A.

Protection of Forest against Insect Infestation and Disease.

§ 113-60.4. **Purpose and intent.**—The purpose of this article is to place within the Department of Conservation and Development, North Carolina Forest Service, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases. (1953, c. 910; 1969, c. 342, s. 3.)

Editor's Note. — The 1969 amendment substituted "North Carolina Forest Service" for "Division of Forestry."

§ 113-60.5. **Authority of the Department of Conservation and Development.**—The authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the Department of Conservation and Development, North Carolina Forest Service. The administration of the provisions of this article, shall be by the State Forester, under the general supervision of the Director of the Department of Conservation and Development. The provisions of this article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture under existing statutes. (1953, c. 910; 1969, c. 342, s. 3.)

Editor's Note. — The 1969 amendment substituted "North Carolina Forest Service" for "Division of Forestry."

ARTICLE 6A.

Forestry Services and Advice for Owners and Operators at Forest Land.

§ 113-81.1. **Authority to render scientific forestry services.** — The North Carolina Department of Conservation and Development is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee, representing the State Forester's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the State Forester and the Board of Conservation and Development deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forest lands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department of Conservation and Development, North Carolina

Forest Service for the furtherance of these activities. (1947, c. 384, s. 1; 1969, c. 342, s. 3; c. 344.)

Editor's Note. — Session Laws 1969, c. 344 added all of this section following the first sentence. "North Carolina Forest Service" has been substituted for "Forestry

Division" near the end of the amended section pursuant to Session Laws 1969, c. 342.

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-91. Powers of Commissioner.

- (1) To Issue Permits. — The Commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes, but no wild animals or wild birds shall be held in captivity under inhumane or unsanitary conditions. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars (\$2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the Commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a State game department or Commission to restock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the Board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens or any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the Commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each

species on hand for propagation purposes at the expiration of the permit. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(1967, c. 1119.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, added the language following "exhibition purposes" in the first sentence of subdivision (1).

As the rest of the section was not affected by the amendment, it is not set out.

§ 113-95. **Licenses required.**—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	\$22.00
Nonresident six-day hunting license	17.75
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50

One dollar (\$1.00) of each nonresident hunting license fee, and nonresident six-day hunting permit fee, shall be used by the North Carolina Wildlife Resources Commission for the propagation, management, and control of migratory waterfowl in North Carolina and a like portion of such license fees shall be contributed by the North Carolina Wildlife Resources Commission to a proper agency or agencies in Canada for the propagation, management, and control of migratory waterfowl.

Any applicant who is a resident of this State shall pay to the authorized license issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, as his fee for issuing each license, the sum of twenty-five cents (25¢) for each license costing less than five dollars and the sum of fifty cents (50¢) for each license costing five dollars or more. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. A nonresident of this State shall obtain a nonresident hunting license which shall entitle him to hunt during the entire season, or such nonresident may obtain a nonresident six-day hunting license which shall entitle him to hunt during six consecutive days during the open season. The combination hunting and fishing license may be obtained only by a resident of this State and shall authorize him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund

which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars (\$10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands and in the county where the deed to such lands is registered by payment of a license fee of five dollars (\$5.00) plus fifty cents (50¢) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commissioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of six dollars (\$6.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Commissioner, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license.

Any resident of this State who has attained the age of sixty-five years may, upon making application, including satisfactory proof of age, to the License Section of the Wildlife Resources Commission at its headquarters in Raleigh, and upon payment of a fee of ten dollars (\$10.00), receive from the Commission a nontransferable combination hunting and fishing license which shall be valid for the life of such person. Such license shall not relieve the holder thereof from the purchase of any additional license or permit which may be required for hunting big game, fishing for mountain trout, hunting and fishing on public wildlife management areas, or using special devices for fishing inland waters. Provided, however, that any person 70 years of age or older shall be permitted to hunt and

fish free of any charge upon satisfactory proof of age. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1968, increased the nonresident license fees by two dollars each and inserted the paragraph immediately following the fee schedule.

The first 1969 amendment, effective Aug. 1, 1969, added the last paragraph.

The second 1969 amendment revised the schedule of fees in the first paragraph, rewrote the second sentence of the third paragraph, substituted the present fifth and sixth sentences of the third paragraph for the former fifth, sixth and seventh sentences of that paragraph, inserted "and in

the county where the deed to such lands is registered" in the second proviso in the fourth paragraph, and increased the fees in that proviso and in the next-to-last paragraph.

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-95.2. Special big game hunting license.—In addition to such hunting licenses as are required by G.S. 113-95, no one may hunt any species of big game without first having procured a special big game hunting license which shall be issued only upon payment of a license fee in the sum of one dollar and fifty cents (\$1.50) plus twenty-five cents (25¢) for the issuing agent. For the purpose of this section "big game" is defined as deer, bear, wild boar and wild turkey. (1969, c. 1042, s. 7.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on

August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-95.3. Licenses for disabled veterans.—All 100% disabled war veterans as determined by the Veterans Administration shall be issued a lifetime license for hunting, fishing and trapping as provided in this chapter, upon payment of one annual license fee. (1969, c. 1042, s. 13.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on

August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-96. Trappers' licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of three dollars (\$3.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner of Game and Inland Fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of four dollars (\$4.00) as a license fee and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars (\$25.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Commissioner, and shall be distinguished from the general hunting licenses above

provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The Board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3; 1969, c. 1042, s. 6.)

Editor's Note. — The 1969 amendment increased the fees in the first and second sentences.

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the

combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-96.1. Schedule of licenses.—The several hunting and trapping licenses required by the preceding G.S. 113-95, G.S. 113-95.2, and G.S. 113-96 are summarized and tabulated as follows:

Nonresident hunting license	\$22.00
Nonresident six-day hunting license	17.75
Nonresident landowner's county hunting license	5.50
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50
Controlled shooting preserve license	6.50
Special big game hunting license	1.75
Nonresident trapping license	25.50
Resident State trapping license	4.25
Resident county trapping license	3.25

(1969, c. 1042, s. 8.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on

August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-100. Open season.

Local Modification.—Beaufort: 1960, c. 121; Jackson: 1969, c. 1259; Pender: 1969, c. 265; Duplin: 1969, c. 258; Gates: 1969, c. 258; Transylvania: 1969, c. 1259.

§ 113-102. Protected and unprotected game.

(b) Unprotected Birds: English sparrows, crows, jays, blackbirds, starlings and buzzards and their nests and eggs.

(1967, c. 728, s. 1.)

Editor's Note.—

The 1967 amendment deleted from subsection (b) "great horned owls, Cooper's hawks, sharp-shinned hawks."

Section 2, Session Laws 1967, c. 728, provides: "This act shall not be construed to prevent the killing of owls or hawks when they are committing depredations, as authorized by G.S. 113-97."

Session Laws 1969, c. 129, effective Sept.

1, 1969, repealed Session Laws 1951, c. 450, as amended by Session Laws 1957, c. 34.

Session Laws 1969, c. 195, effective Oct. 1, 1969, also repealed Session Laws 1951, c. 450.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part

thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number ten (10) gauge, a rifle, or with bow having minimum pull of forty-five (45) pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven eighths of an inch, unless otherwise specifically permitted by this article: Provided, however, blunt type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants; provided that pistols with barrels not less than six inches in length and a muzzle velocity of not under 1100 feet per second and bullet weight of not less than 35 grains or more than 70 grains may be used in the hunting or taking of squirrels or rabbits on one's own land or on land in one's legal possession, or on lands of another where expressed permission has been granted therefor. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine-powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations when hunting raccoons or opossums with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun or rifle be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

No person shall take any wild animal or wild bird at night with the aid of an artificial light if such taking is from any aircraft, vehicle, watercraft, or other conveyance; provided however that this section does not prohibit the collection of specimens for scientific and medical studies when conducted under permit issued by the North Carolina Wildlife Commission.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140.)

Local Modification.—Beaufort: 1969, c. 265; Duplin: 1969, cc. 195, 258; Franklin: 1969, c. 484; Pender: 1999, cc. 129, 258; Stanly: 1969, c. 858; Tyrrell: 1969, c. 757.

Editor's Note.—

The first 1967 amendment inserted in the first paragraph the proviso as to use of pistols for taking squirrels or rabbits. Section 2 of the 1967 amendatory act provides that the act shall apply to the following counties only: Alexander, Buncombe, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey.

The second 1967 amendment inserted "and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations" in the fourth sentence.

The first 1969 amendment inserted "or rifle" in the proviso to the sixth sentence of the first paragraph.

The second 1969 amendment inserted the present second paragraph.

Applied in *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

§ 113-109. Punishment for violation of article.

(b) Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall, upon conviction, be fined not less than two hundred fifty dollars (\$250.00) or imprisoned for not less than ninety days. In any locality or area which is frequented or inhabited by wild deer, the flashing or display of any artificial light from roadway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty feet from such roadway or driveway, or the flashing or display of such artificial light at any place off such roadway or driveway, when either of such acts is accompanied by the possession of a firearm or a bow and arrow during the hours between sunset and sunrise, shall constitute prima facie evidence of a violation punishable under the provisions of the preceding sentence.

(d) Any person who shall take or attempt to take wild turkey during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey during the open season as estab-

lished by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than two hundred and fifty dollars (\$250.00) or imprisoned for not less than ninety (90) days, or both in the discretion of the court.

(1967, c. 729; c. 1149, s. 1.)

Editor's Note.—

The first 1967 amendment increased the minimum fine in subsection (d) from \$100.00 to \$250.00.

The second 1967 amendment rewrote the second sentence in subsection (b).

As the rest of the section was not changed by the amendments, only subsections (b) and (d) are set out.

Applied in *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

ARTICLE 8.

Fox Hunting Regulations.

§ 113-111. **No closed season in certain counties.**—It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Nash, Perquimans, Pitt, Rockingham, Rowan, Stokes, Tyrrell, Union, Watauga, and Yadkin counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522; 1967, cc. 642, 922.)

Local Modification.—By virtue of Session Laws 1967, c. 642, Warren should be stricken from the replacement volume.

Editor's Note.—

Session Laws 1967, c. 642, repealed Session Laws 1957, c. 742, which inserted Franklin in the list of counties in this sec-

tion. The 1967 act provides that it is the intent and purpose of the act that the general laws of the State relating to fox hunting shall be applicable to Franklin County.

Session Laws 1967, c. 922, deleted "Martin" from the list of counties.

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. **Trespass for purposes of hunting, etc., without written consent a misdemeanor.**

Local Modification. — Avery, Mitchell and Watauga: 1967, c. 644.

Prohibited Activities.—This section prohibits hunting, fishing or trapping on properly posted lands or waters without the written consent of the owner or his agent, provided that in designated counties, including Halifax County, no arrest may be made for such violation without consent of the owner or his agent. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Term "Owner" Does Not Include Lessee.—In a prosecution in Halifax County under this section for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the

private club is the lessee of the land under and around the lake upon which defendants were fishing, a lessee not being included within the term "owner" as used in § 113-130, and there being no showing that defendants were fishing without the written consent of the actual owner, or that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under this section, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.2. Regulations as to posting of property.

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in this section. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.—Any person who shall mutilate, destroy or take down any "posted," "no hunting" or similar notice, sign or poster on the lands, waters, or legally established waterfowl blind of another, or who shall post such sign or poster on the lands, waters or legally established waterfowl blind of another, without the consent of the owner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100.00). (1949, c. 887, s. 3; 1953, c. 1226; 1969, c. 51.)

Editor's Note.—The 1969 amendment for "fifteen dollars (\$15.00)" at the end of substituted "one hundred dollars (\$100.00)" the section.

ARTICLE 11.

Miscellaneous Provisions.

§ 113-126.1. Killing bear out of season.—Notwithstanding any other provisions of law, it shall be unlawful to take, trap, kill, or attempt to take, trap or kill bears in North Carolina except during the open seasons therefor as established by regulations of the Wildlife Resources Commission; provided, that when bears are found in the act of destroying, or attempting to destroy, real or personal property, such property owners may take such action as appears reasonable and necessary, including killing the bear, to protect their real or personal property. When a bear is killed out of season by a property owner while such bear is destroying or attempting to destroy real or personal property, a Wildlife Resources Commission representative shall be notified within 12 hours of said killing by the person killing the bear and the carcass of such bear shall be disposed of by gift to some recognized charitable institution located in the county where the bear was killed; provided further, that when there is evidence of depredation to crops or other real or personal property by bears, the Wildlife Resources Commission, in its discretion, may issue a permit authorizing the owner to take necessary and reasonable steps to prevent further depredations.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1967, c. 953.)

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

ARTICLE 12.

General Definitions.

§ 113-129. Definitions relating to resources.

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-130. Definitions relating to activities of public.

Term "Owner" Does Not Include Lessee.—In a prosecution in Halifax County under § 113-120.1 for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the private club is the lessee of the land under and around the lake upon which defen-

dants were fishing, a lessee not being included within the term "owner" as used in this section, and there being no showing that defendants were fishing without the written consent of the actual owner, or

that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. *State v. Manning*, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

ARTICLE 13.

Jurisdiction of Fisheries Agencies.

§ 113-139. **Search warrants.**—(a) Inspectors and protectors are authorized to obtain and execute search warrants within the limitations of this section from any official authorized to issue search warrants in accordance with the procedure in article 4 of chapter 15 of the General Statutes.

(b) Search warrants which inspectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Department is granted exclusive or primary jurisdiction in this subchapter.

(c) Search warrants which protectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Commission is granted exclusive or primary jurisdiction in this chapter or elsewhere, including chapters 75A and 143. (1969, c. 347.)

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-152. **Licensing of vessels; fees.**—(a) The following vessels are subject to the licensing requirements of this section:

- (1) All vessels engaged in commercial fishing operations in coastal fishing waters and
- (2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

"Commercial fishing operations" are all operations preparatory to, during, and subsequent to the taking of fish:

- (1) With the use of commercial fishing equipment or
- (2) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of regulations made under the authority of this article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this article or of regulations made under the authority of the article, or without making reasonably certain that all persons on board are in compliance with the provisions of this article and regulations made under the authority of this article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this article or of regulations made under the authority of this article.

Nothing contained in this section shall require the licensing of any vessel used solely for clamming or oystering by a person not required to have a clam and oyster license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(c) Licenses are issued annually upon a calendar-year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

- (1) Vessels without motors, one dollar (\$1.00).
- (2) Vessels with motors not over eighteen feet in length, three dollars (\$3.00).
- (3) Vessels with motors over eighteen feet but not over twenty-six feet in length, fifty cents (50¢) per foot.
- (4) Vessels with motors over twenty-six feet in length, seventy-five cents (75¢) per foot.
- (5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(f) No persons exempt from the oyster and clam licenses under the provisions of this section may take more than one bushel of oysters and clams in the aggregate on any one day. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2; 1967, c. 444, ss. 1, 2; 1969, c. 1243.)

Editor's Note. — The 1967 amendment added the last paragraph of subsection (a) and added subsection (f).

The 1969 amendment inserted the matter in parentheses in the opening paragraph of subsection (c) and inserted "shall be

taxed, based on tonnage" in subdivision (5) of subsection (c).

As the rest of the section was not changed by the amendments, only subsections (a), (c) and (f) are set out.

§ 113-154. Oyster and clam licenses.

(b) It is unlawful for any individual to take oysters or clams for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(1967, c. 444, s. 3.)

Editor's Note.—The 1967 amendment inserted "for commercial use" near the beginning of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 113-156. Licenses for fish dealers.

(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Commissioner that his residence, or some other office or address, within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a calendar-year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Commissioner, that the license applicant is a resident of North Carolina.

(1969, c. 1244.)

Editor's Note. — The 1969 amendment added the last sentence of subsection (d).

changed by the amendment, only subsection (d) is set out.

As the rest of the section was not

§ 113-157. Taxes on seafood.

(d) The following taxes are applicable to the seafood named below:

- (1) Oysters, eight cents (8¢) per bushel.
- (2) Clams, six cents (6¢) per bushel.
- (3) Scallops, five cents (5¢) per gallon.
- (4) Soft crabs, two cents (2¢) per dozen.
- (5) Hard crabs, ten cents (10¢) per one hundred pounds.
- (6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.
- (7) Shrimp, green, heads on, ten cents (10¢) per one hundred pounds.

(1969, c. 1275.)

Editor's Note. — The 1969 amendment added subdivision (7) of subsection (d) and deleted the former last sentence of subsection (d), which provided an additional tax on oysters taken in North Carolina and shipped in the shell outside the State.

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-189. **Protection of sea turtles and porpoises.** — (a) It shall be unlawful willfully to take, disturb or destroy any sea turtles including, but not limited to, green, hawksbill, loggerhead, and leatherback turtles, or their nests or eggs at any time during the months of May, June, July, August and September of each year.

(b) It shall be unlawful willfully to harm or destroy porpoises. (1967, cc. 198, 1225.)

Editor's Note. — Chapter 1225, Session Laws 1967, designated the former provi-

sions of the section as subsection (a) and added subsection (b).

ARTICLE 16.

Cultivation of Oysters and Clams.

§ 113-202. **New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.**—(a) In order to encourage oyster and clam culture in North Carolina, the Board, upon the recommendation of the Commissioner, may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(b) The area leased may not be less than one acre nor more than 50 acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than 200 acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shore line.

(c) No person may lease more than a total of 50 acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of 200 acres within the State.

(d) Any person desiring to apply for a lease must make written application to the Commissioner on forms prepared by him containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Commissioner con-

cerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Commissioner deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Commissioner or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or the greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Commissioner in his discretion may either recommend that the lease be denied or that it be amended so as to exclude such bed. In the event the Commissioner authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars (\$25.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(f) Upon determination by the Commissioner that the results of the investigation, if required, are satisfactory and that the application for lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Commissioner must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Commissioner recommends approval or a modification to which the applicant agrees, the Commissioner must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than 30 days the meeting of the Board at which the granting of the lease or renewal of lease is to be made; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Board is slated to act upon the application for lease or renewal of lease.

(g) Protests to the granting of the proposed lease may be filed with the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars (\$25.00). The Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Board postpone consideration of the lease to a subsequent meeting. The Commissioner as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina, except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars (\$25.00) deposited with the protest must be forfeited to the use of the Department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollars (\$25.00) deposit must be returned to the person protesting.

(h) The Board in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Commissioner must present all lease appli-

cations to the Board as to which he has published a notice of intention to lease more than 30 days prior to the meeting of the Board. In the event there was a protest that did not prevail before the Commissioner as to any lease recommended by him, the Commissioner must notify the Board of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or in part, it may order the Commissioner to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Board meeting or such other time as it may direct.

(i) After a lease is granted by the Board and the Director is satisfied that the survey submitted meets the criteria and that all fees and rent due in advance have been paid, the Director must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Board in order to define the bounds of the leased area. The Commissioner shall have authority, in his discretion, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining existing contiguous leases.

(j) Initial leases begin upon the issuance of the lease by the Director and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars (\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 15 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate proceedings to terminate the lease.

(l) Upon receipt of notice by the Commissioner of any of the following occurrences, he must commence action to terminate the leasehold:

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Commissioner upon annual remittance of rental.
- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Board.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.
- (6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

- (7) Substantial breach of compliance with the provisions of this article or of regulations of the Board governing use of the leasehold.

The Board is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas, climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Board under the provisions of this paragraph of this subsection, his leasehold shall not be terminated under subdivision (5) of this subsection.

(m) After receipt of notice of any occurrence listed in subsection (1), the Commissioner must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Commissioner is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Commissioner may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where there is no appeal, or where an appeal does not prevail, the Director must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt. The final notice of termination may not be issued pending hearing of any appeal by the Director or by the Board.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Commissioner are required as soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(o) Every year between January 1 and February 15 the Commissioner must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(p) All leases and renewal leases granted after the effective date of this article are made subject to this article and to reasonable amendment of governing statutes, regulations of the Board, and requirements imposed by the Commissioner or his agents in regulating the use of the leasehold or in processing applications or rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Board. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy for the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not

being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Commissioner determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Commissioner may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Commissioner to renew the lease to the Board in which event the lessee shall be granted an opportunity to be heard, de novo, by the Board and the burden of proof, by the greater weight of the evidence, shall be on the lessee. The Board, by majority vote, may affirm or reverse the action of the Commissioner. No appeal shall be allowed from the action of the Board. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1.)

Local Modification.—Brunswick: 1967, c. 876, s. 2.

Editor's Note.—

Former § 113-202, as last amended by Session Laws 1967, c. 24, s. 16, was repealed by Session Laws 1967, c. 88. Present § 113-202, covering the same subject matter was enacted by Session Laws 1967, c. 876, s. 1.

Lease Constitutes Contract That May Not Be Abrogated by Subsequent Statute.

—While there is no vested right in the

provisions of a statute, where a person has leased the bottom of waters from the State for oyster beds pursuant to former law, the lease constitutes a contract between the lessee and the State, and the State may not by subsequent statute abrogate the terms of the contract, either as to duration and renewals or the amount of rent. *Oglesby v. Adams*, 268 N.C. 272, 150 S.E.2d 383 (1966).

§ 113-203. Transplanting of oysters and clams.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from public beds designated by the Board as natural seed oyster areas. Such areas shall be designated as natural seed oyster areas in the following manner:

A petition shall be filed with the Commissioner by the board of county commissioners of the county in which such area is located requesting the designation of and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Commissioner shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Division of Commercial and Sports Fisheries. The Commissioner shall then make a recommendation to the Board as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Board only after the Commissioner so recommends as being in the best interests of the State.

The Commissioner shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Board may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters

and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878.)

Editor's Note. — The 1967 amendment redesignated former subsection (d) as (e) and added present subsection (d). As the rest of the section was not changed by the amendment, only subsections (d) and (e) are set out.

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Board may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Commissioner. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The Board may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Board may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Board in such actions may be represented by the Attorney General. In determining the availability of funds to the Board to underwrite the costs of litigation or make condemnation payments, the use which the Board proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) To the extent that any application of the provisions of § 113-205 and this section is deemed to constitute a taking of private property, any claimant may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 31 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims brought under the authority of this subsection is three rather than two years and the measure of damages is for any condemnation effected rather than for any tort. Where the claiming party asserts damage from the voiding of a grant or right under § 113-205 (a) and further asserts his minority or other disability subsequent to January 1, 1970, the claimant is granted a period of three years after attaining majority or after removal of the disability in which to prosecute the claim before the Industrial Commission. No claims whatever may be entertained by the Industrial Commission, however, after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11.)

Editor's Note.—The first 1969 amendment substituted "appellate division" for "Supreme Court" in the sixth sentence of subsection (d).

The second 1969 amendment substituted

"article 31" for "article 3" in the second sentence of subsection (e).

As the rest of the section was not changed by the amendments, only subsections (d) and (e) are set out.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Board and Department.

§ 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.—(a) Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or

parties desiring to do such shall first obtain a permit from the North Carolina Department of Conservation and Development. The North Carolina Department of Water and Air Resources shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(d) The applicant shall cause to be served in the manner provided by paragraph (g)(9) of this section upon an owner of each tract of riparian property adjoining that of the applicant a copy of the application filed with the State of North Carolina and each such adjacent riparian owner shall have thirty days from the date of such service to file with the Department of Conservation and Development written objections to the granting of the permit to dredge or fill. An owner may be served by publication, in the manner provided by paragraph (g)(10) of this section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is unknown and cannot with due diligence be ascertained, or there has been a diligent but unsuccessful attempt to serve the owner under paragraph (g)(9) of this section.

(e) Applications for permits shall be circulated by the Department of Conservation and Development among all State and federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. In passing upon the application for permit, the Department shall consider, among other things, (i) the value and usefulness of the project to be served by the dredging, (ii) the effect of the proposed dredging and filling on the use of the water by the public, (iii) the value and enjoyment of the property of any riparian owner, (iv) public health, safety and welfare, (v) the conservation of public and private water supply, (vi) wildlife or fresh water, estuarine, or marine fisheries. If the Department finds that the application is not contrary to the public interest, the Department shall issue to the applicant a permit to dredge or fill, or both. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest. The Department shall act upon an application for permit within ninety days after the application is filed.

(f) If any State agency or the applicant raises an objection to the action of the Department of Conservation and Development regarding the permit application within twenty days after said action was taken, the Department shall call a meeting of a review board composed of the directors (or their designees) of the following State agencies: the Department of Administration, the Department of Conservation and Development, the Department of Water and Air Resources, the Wildlife Resources Commission, the Board of Health, and any other agency that may be designated by the Governor. The review board shall set a date for a hearing not more than sixty days from the date of the departmental action. At said hearing, evidence shall be taken by the review board from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the review board may affirm, modify or overrule the action of the Department concerning the permit application. The applicant, if aggrieved, may appeal from the ruling of the review board to the superior court of the county where the

land or any part thereof is located, pursuant to the provisions of article 33 of chapter 143 of the General Statutes.

(g) The following provisions, together with any additional provisions not inconsistent herewith which the review board may prescribe, shall be applicable in connection with hearings pursuant to this article:

- (1) All hearings shall be open to the public. The review board, or its authorized agents, shall have the authority to administer oaths.
- (2) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the review board or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the review board.
- (3) The review board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.
- (4) Subpoenas or subpoenas duces tecum issued by the review board, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the board, application may be made to the superior court of the appropriate county for enforcement thereof.
- (5) The burden of proof at any hearing shall be upon the person or agency, as the case may be, at whose instance the hearing is being held.
- (6) No decision or order of the review board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.
- (7) Following any hearing, the review board shall afford the parties thereto twenty days to submit proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the board's ruling with respect to each such requested finding of fact and conclusion of law.
- (8) The Department and the review board shall give notice to all interested parties of their formal actions taken under this section, including departmental findings upon applications and calling of review board meetings by the Department, and announcement of decisions and setting of hearing dates by the review board.
- (9) All notices which are required to be given or to be served by the Department, the review board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department or review board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The review board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices. Within the meaning of this paragraph, a "notice" includes a copy of an application for a permit required to be served on adjoining riparian owners, pursuant to subsection (d) of this section.

(10) For purposes of this section, service by publication shall consist of publishing a notice of service by publication in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598, and published in a county where any part of the land affected by a proposed project is located or, if no qualified newspaper is published in such county, then in a qualified newspaper published in an adjoining county, or in a county in the same judicial district, once a week for three successive weeks. If the owner's post office address is known or can with reasonable diligence be ascertained, there shall be mailed to the owner at or immediately prior to the first publication a copy of the notice of service by publication. The mailing may be omitted if the post office address cannot be ascertained with reasonable diligence. The notice of service by publication shall (i) designate the department of State government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this section.

(h) The granting of a permit to dredge or fill shall be deemed conclusive evidence that the applicant has complied with all requisite conditions precedent to the issuance of such permit, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part.

(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor.

(l) The Director may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Director to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section, for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of same.

(m) This section shall apply to all persons, firms, or corporations proposing excavation or filling work in the estuarine waters, tidelands, marshlands and state-owned lakes within the State, and to work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina State Board of Health and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

- (2) "Estuarine waters" include all estuarine waters of the State up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Conservation and Development and the Wildlife Resources Commission, within the meaning of G.S. 113-129.
- (3) "Marshlands" means marshes or swamps in or adjacent to estuarine waters, which marshes or swamps are regularly or periodically flooded by the tides. (1969, c. 791, s. 1.)

Editor's Note. — Session Laws 1969, c. 791, s. 3, makes the act effective Jan. 1, 1970.

ARTICLE 21.

Inland Fishing Licenses.

§ 113-271. Hook-and-line licenses in inland fishing waters.

(c) Any person who has been a resident of the State for at least one year and who has been certified by the North Carolina Commission for the Blind or a physician or optometrist as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential shall not be required to have a hook-and-line fishing license to fish in Lake Norman provided such person at the time of fishing in Lake Norman is in attendance at Camp Dogwood.

(d) The hook-and-line fishing licenses are granted upon such terms and for such such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

- (1) Resident State license, \$4.25 (\$0.25). This license is valid only for use by an individual resident of the State.
- (2) Resident State combination hunting-fishing license, \$6.25 (\$0.25). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in § 113-95.
- (3) Resident county license, \$1.65 (\$0.15). This license is valid only for use by an individual resident of the State within the county in which he lives.
- (4) Resident State daily license, \$0.85 (\$0.10). This license is valid only for use on a single day by an individual resident of the State.
- (5) Nonresident State license, \$8.25 (\$0.25). This license is valid for use by an individual within the State.
- (6) Nonresident State five-day license, \$3.75 (\$0.25). This license is valid only for use on five consecutive days by an individual within the State.
- (7) Nonresident State daily license, \$1.65 (\$0.15). This license is valid only for use on a single day by an individual within the State. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9.)

Editor's Note.—The first 1969 amendment added present subsection (c) and designated former subsection (c) as (d).

The second 1969 amendment increased the fees in subsection (d).

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license

shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

As subsections (a) and (b) were not changed by the amendments, they are not set out.

§ 113-272. Special trout licenses.

(d) The special trout licenses issued by the Commission are as follows:

- (1) Resident special trout license, \$2.25 (\$0.25). This license is valid only for use by an individual resident of the State in public mountain trout waters.
- (2) Nonresident special trout license, \$4.25 (\$0.25). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10.)

Editor's Note. — The 1969 amendment increased the fees in subsection (d).

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969;

all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 113-276. Members of armed forces deemed residents; exemptions and exceptions.

(c) Any person who owns land, or who leases and uses land primarily for purposes of cultivation, his spouse, and any dependent member of his family who is under 21 years of age and resides with him may fish during the open seasons on such lands without being subject to the fishing license requirements of §§ 113-271 and 113-272.

(d) Any individual under 16 years of age is exempt from the fishing license requirements of §§ 113-271 and 113-272 anywhere in the State.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing license requirements of § 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line.

(1967, cc. 127, 654.)

Editor's Note.—The first 1967 amendment rewrote subsections (c) and (d).

The second 1967 amendment added all that part of subsection (e) following the second sentence.

As the rest of the section was not changed by the amendments, only subsections (c), (d) and (e) are set out.

ARTICLE 23A.*Promotion of Coastal Fisheries and Seafood Industry.*

§ 113-308. Definitions.—The definitions as given in G.S. 113-128 shall apply to this article, except that the following will additionally apply:

- (1) Agency: A group or an association which shall make applications and otherwise act for the fishing and seafood industry or a distinguishable part thereof. (1967, c. 890, s. 1.)

§ 113-309. **Declaration of policy.**—It is declared to be in the interest of the public welfare of North Carolina that those engaged in “coastal fisheries,” as defined in G.S. 113-129, shall be permitted and encouraged to act jointly and co-operatively for the purposes of promoting the common good, welfare, and advancement of their industry. (1967, c. 890, s. 2.)

§ 113-310. **Certain activities not to be deemed illegal or in restraint of trade.**—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the coastal fisheries or distinguishable part thereof hereinunder certified by the Board shall be deemed or considered illegal or in restraint of trade. (1967, c. 890, s. 3.)

§ 113-311. **Referendum and assessment declared to be in public interest.**—It is hereby declared to be in the interest of the public that the coastal fisheries or any distinguishable part thereof shall be permitted by referendum to be held among themselves as prescribed by this article, to levy upon themselves an assessment on such respective catches, volume, landings, income, or production for the purposes of promoting the common good, welfare, and advancement of the fishing and seafood industry of North Carolina, in addition to any and all taxes, levies, and licenses in effect on June 22, 1967, or that may be enacted and levied or imposed subsequently. (1967, c. 890, s. 4.)

§ 113-312. **Application to Board for authority to conduct referendum.**—Any agency fairly representative of any distinguishable part or all of the fishing and seafood industry, may at any time make application in writing or petition to the Board for certification and approval to conduct a referendum among the coastal fisheries or any distinguishable part thereof for the purpose of levying an assessment under the provisions of this article, collecting, and utilizing the proceeds for the purposes stated in such referendum and as set forth in this article. (1967, c. 890, s. 5.)

§ 113-313. **Action of Board on application.**—Upon receiving an application or petition as herein provided, the Board shall at its next regular quarterly meeting consider such application as follows:

- (1) The Board shall determine if the agency is in fact fairly representative of the coastal fisheries or distinguishable part thereof making application or petitioning for referendum and record in its minutes its determination.
- (2) The Board shall determine if the application or petition is in conformity with the provisions and purposes of this article and record in its minutes its determination.
- (3) If the Board determines in the affirmative as to (1) and (2) above, it shall authorize and empower the agency to hold and conduct a referendum on the question of whether or not members of the fishing and seafood industry, or the distinguishable part thereof, making application or petition, shall levy upon themselves an assessment under and subject to the conditions and provisions and for the purpose stated in this article. (1967, c. 890, s. 6.)

§ 113-314. **Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.**—The agency shall fix, determine, and publicly announce such referendum at least 30 days before the date set for such referendum, the date, hours, and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if favorably voted upon, and the general purposes to which said amount so collected shall be applied. Such public notice shall be published at least once 20 days prior to the election in one or more newspapers having general circulation in the area where the vote is to be taken. (1967, c. 890, s. 7.)

§ 113-315. Maximum assessment.—No assessment levied on any commodity under the provisions of this article shall exceed one percent (1%) of the average value of this commodity during the next three years for which published statistics by the State of North Carolina or the federal government are available next preceding the application or petition. (1967, c. 890, s. 8.)

§ 113-315.1. Arrangements for and management of referendum; expenses.—The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the agency duly certified and authorized to conduct the same, and any and all expenses in connection herewith shall be borne by the agency. (1967, c. 890, s. 9.)

§ 113-315.2. Referendum may be by mail ballot or box ballot; who may vote.—Any referendum conducted under the provisions of this article may be held by mail ballot or by box ballot as may be determined and publicly announced as herein provided by the agency before such referendum is called. A person licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, or anyone who would be subject to paying such assessment should the question be voted in the affirmative, shall be eligible and may vote in such referendum. (1967, c. 890, s. 10.)

§ 113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.—The duly certified agency shall prepare and distribute in advance of such referendum all necessary ballots for the purpose thereof, and shall under rules and regulations drawn up and promulgated by said agency, arrange for the necessary poll holders or officials for conducting the said referendum; and following said referendum and within 10 days thereafter the duly certified agency shall canvass and publicly declare the result of such referendum; except that in the event a mail ballot is used, a mail ballot shall be posted by registered mail on a prearranged date at least 30 days following announcement of same to each duly licensed voter by the agency, and a return, self-addressed envelope of suitable size and construction for containing the completed ballot with ample postage affixed shall be enclosed along with complete instructions on the voting procedure, these instructions stating that the ballot should be marked by the voter to indicate and show his preference, then inserted into the return envelope, sealed, and posted or returned within 10 days of the date of the original or first posting, and on a predesignated date and hour at least 15 days after the original mailing and at an open and public meeting, the return envelopes described above shall be opened, the ballots counted, tabulated, and the results publicly declared by the agency or its authorized representatives. (1967, c. 890, s. 11.)

§ 113-315.4. Levy and collection of assessment; use of proceeds and other funds.—If in such referendum called under the provisions of this article two thirds or more of the voters eligible and voting vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum, then such assessment shall be collected annually, or more often as predetermined by the agency, for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules, and regulations as may be determined by the agency prior to the announcement of the referendum and included in the announcement of the referendum; said assessment so collected shall be paid into the treasury of the agency, to be used together with other funds, including donations and grants from individuals, firms, governmental agencies, or corporations, and from other fees, dues, or assessments, for the purpose set out in the referendum. (1967, c. 890, s. 12.)

§ 113-315.5. Alternative method for collection of assessment.—As an alternate method for the collection of assessments provided for in § 113-310

[§ 113-315.4], upon the request or petition of the agency and action by the Board as prescribed in § 113-313, the Commissioner shall notify, by registered letter, all persons or firms licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Commissioner who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Commissioner or his duly authorized agents. (1967, c. 890, s. 13.)

Editor's Note. — The reference "§ 113-315.4" inserted in brackets following "§ 113-310" is suggested as a correction for the reference in Session Laws 1967, c. 890, s. 13, to s. 3 of that act, codified as § 113-310.

§ 113-315.6. Subsequent referendum where assessment defeated.—In the event such referendum as herein provided for shall not be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall have full power and authority to call another referendum for the purposes herein set forth at any time after the next succeeding 12 months, on the question of an assessment for three years. (1967, c. 890, s. 14.)

§ 113-315.7. Subsequent referendum where assessment adopted.—In the event such referendum as herein provided for shall be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall in its discretion have full power and authority to call and conduct during the third year after the latest referendum another referendum for the purpose set forth herein for the next ensuing three years. (1967, c. 890, s. 15.)

§ 113-315.8. Refund of assessment.—Any person or firm hereinunder assessed shall have the right to demand of and receive from the treasurer or disbursing office of the agency a refund of such assessment so collected, provided such demand for refund is made in writing within 30 days from the end of the assessment year which shall be determined by the agency. (1967, c. 890, s. 16.)

§ 113-315.9. Bond of treasurer or financial officer of agency; audit.—Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

The Board shall cause an annual audit to be made of the financial records of the agency and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made. (1967, c. 890, s. 17.)

ARTICLE 24.

Miscellaneous Transitional Provisions.

§ 113-322. Certain river designated as commercial fishing waters.—Notwithstanding any other provision of this chapter, or any rule, regulation, or administrative decision of Commission, the following described areas are hereby made and designated commercial fishing waters:

White Oak River, from the point where Stella Bridge crosses said river, to Grants Creek. (1967, c. 1114.)

Cross Reference.—For provision that all fishing waters shall apply to coastal fishing waters, see § 113-129.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

ARTICLE 27.

Oil and Gas Conservation.

Part 2. Provisions Dependent upon Action of Governor.

§ 113-404. **Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and appellate division.**—The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the Division and of the evidence heard by the Division on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the Division, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the appellate division of this State from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the appellate division of this State shall be the same as in other civil actions, except as herein provided. No court of this State shall have power to set aside, modify or vacate any order or decision of the Division except as herein provided. (1945, c. 702, s. 24; 1969, c. 44, s. 70.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the fifth and sixth sentences.

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

- 114-4.2a. Assistant attorney general assigned to State Insurance Department.
114-8. [Repealed.]

Article 3.

Division of Criminal Statistics.

Sec.

- 114-10.1. Police Information Network.
114-11. [Repealed.]

ARTICLE 1.

Attorney General.

§ 114-2. **Duties.**—It shall be the duty of the Attorney General:

- (1) To defend all actions in the appellate division in which the State shall be interested, or is a party; and also when requested by the Governor or either branch of the General Assembly to appear for the State in

any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

- (2) At the request of the Governor, Secretary of State, Treasurer, Auditor, Utilities Commission, Commissioner of Banks, Insurance Commissioner or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.
- (3) To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution.
- (4) To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.
- (5) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.
- (6) To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.
- (7) To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn.
- (8) a. To intervene, when he deems it to be advisable in the public interest, in proceedings before any courts, regulatory officers, agencies and bodies, both State and federal, in a representative capacity for and on behalf of the using and consuming public of this State. He shall also have the authority to institute and originate proceedings before such courts, officers, agencies or bodies and shall have authority to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest.
- b. Upon the institution of any proceeding before any State agency by application, petition or other pleading, formal or informal, the outcome of which will affect a substantial number of residents of North Carolina, such agency or agencies shall furnish the Attorney General with copies of all such applications, petitions and pleadings so filed, and, when the Attorney General deems it advisable in the public interest to intervene in such proceedings, he is authorized to file responsive pleadings and to appear before such agency either in a representative capacity in behalf of the using and consuming public of this State or in behalf of the State or any of its agencies. (1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; 1967, c. 691, s. 51; 1969, c. 535.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, substituted "appellate division" for "Supreme Court" in subdivision (1).

The 1969 amendment added subdivision (8).

Duties of Attorney General and Solicitor as to Case on Appeal.—See *State v. Hickman*, 2 N.C. App. 627, 163 S.E.2d 632 (1968).

§ 114-4. Assistants; compensation; assignments.—The Attorney General shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the

assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182; 1967, c. 260, s. 1.)

Editor's Note.—The 1967 amendment substituted "shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System" for "shall receive a salary to be fixed by the Director of the Budget" at the end of the first sentence.

§ 114-4.2a. Assistant attorney general assigned to State Insurance Department.—The Attorney General is hereby authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned to the Commissioner of Insurance and the State Insurance Department. Such assistant attorney general shall perform such additional duties as may be assigned to him by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. The salary of said assistant attorney general and a secretary shall be paid from funds appropriated to the Insurance Department. (1967, c. 1115, s. 1.)

Editor's Note.—Section 3, c. 1115, Session Laws 1967, makes the act effective July 1, 1967.

§ 114-7. Salary of Attorney General.—The Attorney General shall receive an annual salary of twenty-seven thousand dollars (\$27,000.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3; 1967, c. 1130; c. 1237, s. 3; 1969, c. 1214, s. 3.)

Editor's Note.—

Both 1967 amendments increased the salary from \$18,000 to \$20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the

second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from \$20,000 to \$27,000.

§ 114-8: Repealed by Session Laws 1969, c. 44, s. 89.

ARTICLE 2.

Division of Legislative Drafting and Codification of Statutes.

§ 114-9.1. Revisor of Statutes.—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)

Editor's Note.—

The 1967 amendment substituted "and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System" for

"and shall receive a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission" at the end of the section.

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

- (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information

available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

- (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
- (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
- (5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

Editor's Note. — Session Laws 1969, c. 1190, s. 57, effective July 1, 1969, repealed this section.

Session Laws 1969, c. 1267, added subdivision (2) of the section as set out above

and renumbered former subdivisions (2), (3) and (4) as (3), (4) and (5).

As the opening paragraph and subdivision (1) were not changed by the amendment, they are not set out.

§ 114-10.1. Police Information Network.—(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of § 114-10 of this article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Department of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2.)

§ 114-11: Repealed by Session Laws 1969, c. 1190, s. 57, effective July 1, 1969.

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties.

Cited in *Chapman v. State*, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

§ 114-19. Taking fingerprints and photographs of suspects and convicts; criminal statistics.

Opinions of Attorney General. — The Honorable Gilbert H. Burnett, District Court Judge, Fifth Judicial District, 7/23/69.

Origin.—This section, which was enacted in 1965, has its origin in § 148-79, which

was originally enacted in 1925 and which was repealed in 1965 upon enactment of this section. *Chapman v. State*, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

Admissibility of Prints Taken by Arresting Officer.—This section does not

prohibit the use in evidence on trial of the prints of defendant taken by the arresting officer, even though there is no factual evidence to establish that such fingerprinting

was authorized by the sheriff or chief of police. Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

Chapter 115.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 5.

County and City Boards of Education.

Sec.

115-19. How elected.

115-20. County board of elections to provide for elections.

Article 6.

Powers and Duties of Superintendents.

115-59. School organization statement and allocation of instructional personnel.

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

Article 8.

Creating and Consolidating School Districts and School Administrative Units.

115-74.1. Consolidation and merger of county and city school administrative units located in the same county.

115-74.2. Merger of two or more adjoining county school administrative units.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 15.

School Sites and Property.

115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

115-142. Contracts with teachers, principals, and other professional employees; termination of contracts; continuing contracts; notice.

Sec.

115-150.4 Refund of fees upon transfer of pupils.

Article 17A.

Interstate Agreement on Qualifications of Educational Personnel.

115-151.1. Purpose, findings, and policy.

115-151.2. Definitions.

115-151.3. Interstate educational personnel contracts.

115-151.4. Approved and accepted programs.

115-151.5. Interstate cooperation.

115-151.6. Agreement evaluation.

115-151.7. Other arrangements.

115-151.8. Effect and withdrawal.

115-151.9. Construction and severability.

115-151.10. Designated state official.

Article 18.

Certification and Salaries of Employees; Workmen's Compensation.

115-153.2. Authority for payroll deductions for group insurance, credit union loans and association dues.

115-153.3. Additional payroll deductions authorized; written consent to county or city administrative unit.

Article 18B.

Student Teachers.

115-160.5. Student teacher and student teaching defined.

115-160.6. Legal protection.

115-160.7. Assignment of duties.

SUBCHAPTER VIII. PUPILS.

Article 20.

General Compulsory Attendance Law.

115-172. Deaf children and blind children to attend school; age limits; minimum attendance.

115-173. Parents, etc., failing to enroll deaf child in school guilty of misdemeanor; provisos.

115-175. School superintendent to report blind and deaf children.

GENERAL STATUTES OF NORTH CAROLINA

Article 21.

Assignment and Enrollment of Pupils.

Sec.

- 115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

- 115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities.

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

- 115-198.1. State kindergarten program.

Article 25.

Selection and Adoption of Textbooks.

- 115-206, 115-207 to 115-215. [Repealed.]

Article 25A.

Textbooks and Instructional Material.

- 115-206.1. Textbook needs are determined by course of study.
115-206.2. State Board of Education to select and adopt textbooks.
115-206.3. Appointment of Textbook Commission.
115-206.4. Commission to evaluate books offered for adoption.
115-206.5. Selection of textbooks by Board.
115-206.6. Adoption of textbooks and contracts with publishers.
115-206.7. Continuance and discontinuance of contracts with publishers.
115-206.8. Procedure for change of textbook.
115-206.9. Advice from and suits by Attorney General.
115-206.10. Publishers to register.
115-206.11. Sale of books at lower price reduces price to State.
115-206.12. Powers and duties of the State Board of Education in regard to textbooks.
115-206.13. State Board of Education authorized to discontinue handling supplementary and library books.
115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.

Sec.

- 115-206.15. Legal custodians of books furnished by State.
115-206.16. Rental fees for textbooks prohibited; damage fees authorized.
115-206.17. Duties and authority of superintendents of local administrative units.
115-206.18. Right to purchase.

Article 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

- 115-216 to 115-228. [Repealed.]

Article 27.

Vocational Education.

- 115-235.1. Development of program in middle and lower grades.

Article 33.

Safety Devices Required.

- 115-258. Eye protection devices required in certain courses.
115-259. Visitors to wear eye safety devices.
115-260. "Industrial quality eye protective devices" defined.
115-260.1. "Corrective-protective" devices.

Article 35.

Education Expense Grants.

- 115-274 to 115-295. [Repealed.]

Article 38A.

Education for Hearing-Impaired Children in the Public Schools.

- 115-315.1. Purpose of article.
115-315.2. Definitions.
115-315.3. Organization of program; rules and regulations; eligibility for instructional training; information to local school units.
115-315.4. Authority of local school board to establish programs; joint operations; duty of local superintendent.
115-315.5. Expenditure of State and local funds; gifts.
115-315.6. Request for teachers and other allotments from State Board; disapproval of request; transfer of funds.

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

Article 40.

Governor Morehead School.

- 115-321. Incorporation, name and management.

- Sec.
115-322. Directors; appointment; terms; vacancies.
115-323. Chairman, executive committee, and other officials; election, terms, and salaries.
115-324. Meetings of the board and compensation of the members.
115-325. Admission of pupils; how admission obtained.
115-326. Admission of curable blind.
115-327. Admission of pupils from other states.
115-328. Board may confer diplomas.
115-329. Election of officers.
115-330. State Treasurer is ex officio treasurer of institution.
115-331. Reports of board to Governor.
115-332. Removal of officers.
115-333. Employees.
115-334. When clothing, etc., for pupils paid for by county.
115-335. [Repealed.]

SUBCHAPTER XIA. COMPACT.

Article 43.

Interstate Compact for Education.

- 115-349. Enactment of compact.

- Sec.
115-350. Establishment of North Carolina Education Council.
115-351. Filing copy of bylaws with Secretary of State.

SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

Article 44.

North Carolina Advancement School.

- 115-352. Continuation of North Carolina Advancement School by the State Board of Education.
115-353. Purpose of the North Carolina Advancement School.
115-354. Board of governors.
115-355. Responsibilities of the board of governors.
115-356. State Board of Education to appoint director.
115-357. Responsibilities of the director.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

State Plan for Public Education.

§ 115-4. Administrative units classified.

An "administrative unit" is not a "school district" within the meaning of N.C. Const., Art. II, § 29. *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

§ 115-5. School system defined.

Quoted in *Huggins v. Wake County Bd. of Educ.*, 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-6. Schools classified and defined.

- (1) An elementary school, that is, a school which embraces a part or all of the eight elementary grades and which may have a kindergarten or other early childhood program.

(1969, c. 1213, s. 2.)

Editor's Note.—

The 1969 amendment added "and which may have a kindergarten or other early childhood program" at the end of subdivision (1).

As the rest of the section was not

changed by the amendment, only subdivision (1) is set out.

Quoted in *Huggins v. Wake County Bd. of Educ.*, 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-7. Term "district" defined.

The term "school district" in N.C. Const., Art. II, § 29, means a "district" provided for in N.C. Const., Art. IX, § 3. That is, a "school district" is an area with-

in a county in which one or more public schools must be maintained. It is so defined in this section. *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-11. Powers and duties generally.

(11) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County.—The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(18) Education Research.—The Board is authorized to sponsor or conduct educational research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1)

Editor's Note.—

The 1967 amendment rewrote subdivision (11).

The 1969 amendment added subdivision (18).

As the rest of the section was not

changed by the amendments, only subdivisions (11) and (18) are set out.

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-13. Office and salary.—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars (\$10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of twenty-six thousand dollars (\$26,000.-00): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the general fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2.)

Editor's Note.—

Both 1967 amendments increased the salary in the second paragraph from \$18,000 to \$20,000. The first amendatory act provided that the increase should be effective

Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from \$20,000 to \$26,000.

ARTICLE 5.

County and City Boards of Education.

§ 115-18. How constituted. — The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2.)

Local Modification. — Bladen: 1967, c. 258; Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739; Tyrrell: 1969, c. 153.

Editor's Note.—The 1967 amendment, effective July 1, 1969, rewrote this section. Section 7 of the amendatory act provides: "The provisions of this act shall not apply to any county board of education that uses as a method of selecting the members to its board of education an election by a vote

of the people as of the effective date of this act."

The 1969 amendment again rewrote this section. Session Laws 1969, c. 1301, s. 4, provides: "All laws and clauses of laws in conflict with this act are repealed, except local acts providing for the election of county boards of education by the people."

Opinions of Attorney General. — Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 9/5/69.

§ 115-19. How elected.—The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of chapter 163 of the General Statutes then governing primary elections, and any local acts amendatory thereto.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years. If the appointments heretofore made by the General Assembly are for terms of office which comply with the preceding sentence, elections shall be held in 1970, 1972, and biennially thereafter to fill vacancies as they occur for terms of four years. If the appointments heretofore made by the General Assembly are for terms which all expire in the same year, at the first election held hereunder the three members receiving the highest number of votes shall be elected for terms of four years and the two members elected with the next highest number of votes shall be elected for terms of two years. Thereafter, all candidates shall be elected for terms of four years. If the appointments heretofore made by the General Assembly are for terms of office which do not comply with the first sentence of this paragraph but do not all expire in the same year, and/or if the board consists of any number of members other than five, the board shall, on or before the fourteenth day before the deadline for filing notice of candidacy for county offices in 1970, adopt a resolution designating the term of office to be served by members elected to fill vacancies occurring in 1970 and 1972, which terms shall be either two years or four years, in order that the board shall consist of five members with as nearly equal to one half as possible of the terms of office expiring every two years thereafter. Any such resolution shall be filed with the county board of elections, the State Board of Elections, and the State Board of Education. (1955, c. 1372, art. 5, s. 2; 1967, c. 972, s. 2; 1969, c. 1301, s. 2.)

Local Modification.—Caldwell: 1967, c. 787; Johnston: 1969, c. 261; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739; Tyrrell: 1969, c. 153.

Editor's Note.—

Session Laws 1967, c. 972, s. 2, effective

July 1, 1969, rewrote this section.

The 1969 amendment again rewrote this section. Session Laws 1969, c. 1301, s. 4, provides: "All laws and clauses of laws in conflict with this act are repealed, except local acts providing for the election of county boards of education by the people."

As to application of the amendment, see William L. Hill, II, Attorney, New Hanover County Board of Education, 9/5/69.

Opinions of Attorney General. — Mr.

§ 115-20. County board of elections to provide for elections.—The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education. (1955, c. 1372, art. 5, s. 3; 1967, c. 972, s. 3.)

Local Modification.—Caldwell: 1977, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739.

Editor's Note. — The 1967 amendment, effective July 1, 1969, substituted "elections

of county boards of education" for "such nominations" in the first sentence and added the second sentence.

As to application of the amendment, see Editor's note to § 115-18.

§ 115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids.

Local Modification.—Town of Scotland Neck: 1969, c. 31; town of Warrenton: 1969, c. 578; Littleton-Lake Gaston School District: 1969, c. 628.

§ 115-22. Members to qualify.—Those persons who shall be elected members of the county boards of education must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure to qualify within that time shall constitute a vacancy which shall be filled as set out in G.S. 115-24. Those persons appointed to fill a vacancy must qualify within 30 days after notification. A failure to qualify within that time shall constitute a vacancy.

This section shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people. (1955, c. 1372, art. 5, s. 5; 1967, c. 972, s. 4.)

Local Modification.—Lincoln: 1969, c. 637.

As to application of the amendment, see Editor's note to § 115-18.

Editor's Note. — The 1967 amendment, effective July 1, 1969, rewrote this section.

§ 115-23. Vacancies in nominations for membership on county boards.—If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate. (1955, c. 1372, art. 5, s. 6; 1967, c. 972, s. 5.)

Local Modification. — Lincoln: 1969, c. 637.

for "by the General Assembly of the members of the county board of education for the county of such candidate, the."

Editor's Note.—The 1967 amendment, effective July 1, 1969, inserted "nominated on a partisan basis" and substituted "such"

As to application of the amendment, see Editor's note to § 115-18.

§ 115-24. Vacancies in office.—All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of G.S. 115-19 by death, resignation, or other causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election. (1955, c. 1372, art. 5, s. 7; 1967, c. 972, s. 6.)

Local Modification.—Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739.

Editor's Note. — The 1967 amendment,

effective July 1, 1969, rewrote this section.

As to application of the amendment, see Editor's note to § 115-18.

§ 115-29. Compensation of board members.

Local Modification.—Johnston: 1969, c. 919; Polk: 1967, c. 403, amending 1957, c. 210; Warren: 1967, c. 507.

§ 115-32. Power to subpoena and to punish for contempt.

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-34. Appeals to board of education and to superior court.

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-35. Powers and duties of county and city boards generally.

(h) Educational Research.—County and city boards of education are authorized to sponsor or conduct educational research and special projects approved by the State Department of Public Instruction and the State Board of Education that may improve the school system under its jurisdiction. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2.)

Cross Reference.—As to duty of board of education to provide school buildings and equipment, see § 115-129 and note thereto.

Editor's Note.—

The 1969 amendment added subsection (h).

As the rest of the section was not changed by the amendment, only subsection (h) is set out.

Applied in Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

§ 115-36. Length of school day, school month, and school term.—

(a) School Day.—The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several county and city boards of education may adopt rules and regulations allowing handicapped pupils and pupils attending the first and second grades to attend school for a period of less than six hours. The superintendent of the several county and city boards of education, in the event of an emergency or act of God requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for the remainder of that particular day without loss of credit to the pupil or loss of pay to the teacher.

(1969, c. 678.)

Editor's Note.—

The 1969 amendment added all of the language following the colon in subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 115-37. Subjects taught in public schools.—County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, alcoholism, and narcoticism at the appropriate grade levels. Nothing in this chapter shall prohibit city or county boards of education from operating a nongraded system in which pupils are taught at their individual learning levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101; 1969, c. 487, s. 2.)

Editor's Note.—The 1969 amendment added the second sentence.

On or before the date of the amendment, 149 S.E.2d 345 (1966).

§ 115-38. **Kindergartens.**—County and city boards of education may provide for their respective administrative units, or for any district in a county administrative unit, kindergartens as a part of the public school system and may operate them from any funds available to the board for this purpose.

Any kindergarten program that shall be established or any kindergarten program now being operated shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with standards adopted by the State Board of Education. (1955, c. 1372, art. 5, s. 21; 1969, c. 1213, s. 3.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-39. **Requirements and limitations of board in selecting superintendent and his term of office.**—At a meeting to be held on the first Monday in April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially or quadrennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July first and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent's certificate and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent's certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1; 1967, c. 697.)

Editor's Note.—The 1967 amendment made changes in the first and last paragraphs so as to authorize a four-year term

for the superintendent of education, in the discretion of the county or city board of education.

§ 115-51. **School food services provided by county and city boards of education.**—As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to re-

duce the cost of food, to serve better food, or to provide free or reduced price lunches to indigent children and for no other purpose. The term, "cost of operation," shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. Personnel shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Provided that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the "cost of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990.)

Editor's Note.—

The 1967 amendment substituted "providing food services, and the cost of" for "preparing and serving food, and the cost

of such inexpensive and expendable" in the fourth sentence, and added the present fifth and sixth sentences.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.

Without Waiver Liability Limited, etc.—
In accord with original. See *Brown v.*

Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-58. Duties with respect to election of principals, teachers and other personnel.

Opinion of Attorney General. — Mr.
William E. Terry, Superintendent, Stokes
County Board of Education, 8/12/69.

§ 115-59. School organization statement and allocation of instructional personnel.—(a) Each year the superintendent of each school administrative unit shall submit to the State Board of Education a statement, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require. On the basis of this organization statement, and any other information considered relevant, the State Board of Education shall determine for each administrative unit the number of teachers and other instructional personnel to be included in the State budget.

(b) Under rules and regulations which it promulgates, the State Board of Education shall allocate teachers and instructional personnel to the various administrative units in not more than the following three categories: (i) general teachers; (ii) vocational teachers; and (iii) special education teachers. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539.)

Editor's Note.—

The 1969 amendment rewrote this section.

Stated in *North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ.*, 393 F.2d 736 (4th Cir. 1968).

ARTICLE 7.

*School Committees—Their Duties and Powers.***§ 115-70. Appointment; number of members; terms; vacancies; advisory council.**

Local Modification.—Cumberland: 1969, c. 238; North Surry School District: 1969, c. 613.

Opinions of Attorney General. — Mr. Ferd L. Davis, Attorney, Wake County Board of Education, 10/28/69.

§ 115-72. How to employ principals, teachers, janitors and maids.

Local Modification.—By virtue of Session Laws 1967, c. 1112, Polk should be stricken from the replacement volume

A court may not usurp the discretionary power of the school committee, but must judge the constitutionality of its action on the basis of the facts which were before the board and on its logic. *Johnson v. Branch*, 364 F.2d 177 (4th Cir. 1966).

Action of School Committee in Refusing to Renew Teacher's Contract Held Arbitrary and Capricious. — See *Johnson v. Branch*, 364 F.2d 177 (4th Cir. 1966) (decided prior to 1967 amendment to § 115-142; providing contracts continue from year to year until board of education determines employee is not to be retained for succeeding school year).

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

ARTICLE 8.

Creating and Consolidating School Districts and School Administrative Units.

§ 115-74. Creation and modification of school districts by State Board of Education.—The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts: Provided further, that nothing in this section shall affect the right of any city school administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432; 1967, c. 643, s. 2.)

Editor's Note. — The 1967 amendment added, as the second proviso to the first paragraph, the proviso which formerly appeared at the end of the second paragraph, and deleted the remainder of the second paragraph, relating to consolidation of city and county administrative units.

§ 115-74.1. Consolidation and merger of county and city school administrative units located in the same county.—City school administrative units may be consolidated and merged with contiguous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

- (1) The name by which the merged school administrative unit shall be identified and known

- (2) The effective date of the merger
- (3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including
 - a. The termination of any terms of office proposed in the reorganization of the board
 - b. The method of constituting and continuing the board of education, the length of the members' terms of office, the dates of induction into office, the organization of the board, the procedure for filling vacancies, and the compensation to be paid members of the board for expenses incurred in performance of their duties
- (4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes
- (5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit
- (6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all administrative units involved
- (7) A public hearing, which shall have been announced at least ten days prior to the hearing, on the proposed plan of merger
- (8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area
- (9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units

thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969 are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742.)

Editor's Note. — The 1969 amendment rewrote subdivision (6) and added the last paragraph of the section.

Opinions of Attorney General. — Mr. R.A. Collier, Sr., Attorney for Statesville City School Board, 7/28/69.

§ 115-74.2. Merger of two or more adjoining county school administrative units.—(a) Boards of education of contiguous counties or boards of education in a group of counties in which each county is contiguous with at least one other county in the group, and any city administrative unit located in counties to be merged, may merge school administrative units upon approval by the State Board of Education of a written plan for merger submitted by the boards of education involved and bearing the approval of the tax levying body for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G. S. 115-74.1 (providing for the merger of units in the same county), and shall contain any other provision deemed necessary or appropriate by the State Board of Education or the local boards of education for the merger of school units in two or more counties.

(b) The plan of merger, including any arrangements for financing or taxing for the schools in the new administrative unit, may be, but is not required to be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for the purpose of approving these matters. Such elections or referendums, if held, shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122. Each board of county commissioners shall have authority to have such elections or referendums conducted by the board of elections of its county under the provisions set forth in G.S. 115-122.

(c) If twenty percent (20%) of the qualified voters of a county to be merged, petition the board of county commissioners of their county for an election as to whether their county shall be included in the proposed merger, the board of county commissioners shall call an election on this question for its county under the provisions of G.S. 115-122. The petition must be submitted to the board of county commissioners within ten days following the public hearing required by G.S. 115-74.1 on the proposed plan of merger. The board of county commissioners shall have authority to have such an election conducted by the board of election of its county under the provisions set forth in G.S. 115-122.

(d) Boards of education considering a merger of two or more counties may spend money necessary for studying and preparing for such a merger. (1969, c. 828.)

§ 115-76. Consolidation of districts and discontinuance of schools.

Concurrent Action by County and State Boards of Education Required for Consolidation. — Under subdivision (1) of this section concurrent action by the county board of education and the State Board of Education after the required public hearing is essential in order to consolidate any two high schools with an average daily

attendance of 60 or more pupils. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Sufficient Compliance with Subdivision (1).—See *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 9.

*County and City Boards of Education and Budgets.***§ 115-78. Objects of expenditure for operation of public schools.**

(b) The current expense fund shall include:

- (1) General Control.—Salaries and travel of superintendent, assistant superintendent, business manager, and attendance counselor; salaries of clerical assistants, property costs clerks, and the treasurer, including cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.
- (2) Instructional Service.—Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors; salaries and travel of teachers of vocational education including agriculture, home economics, trades and industries and distributive education; clerical and travel expenses of principals; commencement expenses; and instructional supplies.
- (3) Operation of Plant.—Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.
- (4) Maintenance of Plant.—Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.
- (5) Fixed Charges.—Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.
- (6) Auxiliary Agencies.—Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.
- (7) Special program for hearing-impaired children at the preschool age level and for school age children who are hard-of-hearing, includes cost of purchasing instructional apparatus and equipment, salaries for trained instructors and teachers.

(1969, c. 1166, s. 2.)

Editor's Note.—

The 1969 amendment added subdivision (7) of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 115-79. Objects of expenditure included in State budget.—The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items or for any other item for which State appropriations are authorized:

- (1) General control:
 - a. Salary of superintendent.
 - b. Travel of superintendent.

- c. Salaries of clerical assistants.
- d. Salaries of property and cost clerks.
- e. Office expenses.
- f. Per diem and travel of county board of education.
- g. Salaries of attendance counselors.
- (2) Instructional service :
 - a. Salaries of elementary and high school teachers.
 - b. Salaries of elementary and high school principals.
 - c. Salaries of supervisors.
 - d. Instructional supplies.
- (3) Operation of plant :
 - a. Wages of janitors.
 - b. Fuel.
 - c. Water, light, and power.
 - d. Janitor's supplies.
 - e. Telephones.
- (4) Fixed charges, compensation :
 - a. School employees.
 - b. Injuries to school pupils.
 - c. Tort claims.
- (5) Auxiliary agencies :
 - a. Transportation of pupils :
 - 1. Wages of bus drivers.
 - 2. Gas, oil and grease.
 - 3. Gas storage equipment.
 - 4. Salaries of mechanics.
 - 5. Repair parts and batteries.
 - 6. Tires and tubes.
 - 7. License and title fees.
 - 8. Garage equipment.
 - 9. Contract transportation.
 - 10. Major replacements of chassis and bodies.
 - 11. Principals' bus travel.
 - b. Libraries : Supplies, repairs and replacements.
 - c. Child health program.
 - d. Hearing-impaired program.

In making provision from State funds, the State Board of Education shall effect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. Nothing in this chapter shall prevent the use of State monies for supporting or financing school programs conducted in the summer if approved by the State Board of Education. (1955, c. 1372; art. 9, s. 2; 1963, c. 1223, s. 4; 1969, c. 517, s. 3; c. 1166, s. 3; c. 1213, s. 5.)

Editor's Note.—

The first 1969 amendment added the last sentence.

The second 1969 amendment added paragraph d of subdivision (5).

The third 1969 amendment added "or for any other item for which State appropriations are authorized" at the end of the opening paragraph.

§ 115-80. Rules for preparation of school budgets.—(a) County-Wide Current Expense Fund Budget.—County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds

to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.

The county-wide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

Notwithstanding any other provisions of this chapter, when necessity is shown by county and city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, the board of county commissioners shall make a sufficient tax levy to provide the funds: Provided, that nothing in this chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

(1967, c. 1263.)

Editor's Note.—

The 1967 amendment rewrote the last paragraph in subsection (a).

As the rest of the section, was not affected by the amendment, it is not set out.

Constitutionality.—Subsection (a) of this section is a valid exercise of legislative authority, and a challenge to its validity on the asserted ground it is violative of N.C. Const., Art. VII, § 6, is without merit. *Harris v. Board of Comm'rs*, 274 N.C. 343, 163 S.E.2d 387 (1968).

The last paragraph of subsection (a) of this section is authorized by N.C. Const., Art. IX, § 2, and does not violate the provisions of N.C. Const., Art. VII, § 6. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Delegation of Authority.—Under sub-

section (a) of this section a county operates under a delegation of authority from the General Assembly to carry out a function imposed upon the General Assembly by N.C. Const., Art. IX, § 2. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries.—In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to subsection (a) of this section, the board of county commissioners acts as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools, and there is no requirement that such levy be submitted to a vote of the people, the

limitations imposed by N.C. Const., Art. VII, § 6, being applicable solely to municipalities and not to agencies of the State. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

This section in no way prohibits the county commissioners, upon a proper find-

ing of necessity, from levying an additional tax to supplement the current expense fund for the purpose of supplementing teachers' salaries, if they are otherwise authorized to do so. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

§ 115-80.3. Investment of moneys in reserve fund.—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1959, c. 524; 1967, c. 798, s. 2.)

Editor's Note.—The 1967 amendment rewrote this section.

§ 115-87. Procedure in cases of disagreement or refusal of tax levying authorities to levy taxes.—In the event of a disagreement between the county or city boards of education and the tax levying authorities as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, or any item of either fund, the chairman of the county or city board of education and the presiding officer of the tax levying authorities shall arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item. If agreement cannot be reached in this manner, the board of education whose budget is in question and the tax levying authorities shall each have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board.

In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between such boards and he shall render his decision thereon within five days, but either the board of education or the tax levying authorities shall have the right to appeal to the superior court within ten days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive and he shall give judgment requiring the tax levying authorities to levy the tax which will provide the amount of the current expense fund, the capital outlay fund, and the debt service fund, which he finds necessary to maintain the schools in the administrative unit. In case of an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the nine months' school fund and from other sources, an amount for the current expense fund and the prorated part of capital outlay fund equal to the amount of these funds for the previous year. Also, in case of an appeal, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The tax levying authorities shall forthwith levy the taxes according to the judgment rendered and upon refusal to do so, the members of said authority shall be in contempt and may be punished accordingly. (1955, c. 1372, art. 9, s. 10; 1969, c. 44, s. 71.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Superior Court" near the beginning of the second sentence of the second paragraph.

§ 115-88. Jury trial as to amount needed to maintain schools.—The tax levying authorities or boards of education shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding session of the superior court, and shall have precedence over all other business of the court.

Provided, that if the judge holding the court shall certify to the Chief Justice of the Supreme Court, either before or during such session, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said session, the Chief Justice shall immediately call a special session of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such session. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the tax levying authorities shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1955, c. 1372, art. 9, s. 11; 1969, c. 44, s. 72.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last proviso. substituted "session" for "term" throughout the first and second sentences and sub-

ARTICLE 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-99. Unclaimed fees of jurors and witnesses paid to school fund.—All moneys due jurors and witnesses which remain unclaimed in the hands of any clerk of the superior court or of the clerk of any inferior court for more than one year shall be paid over to the county treasurer by the clerk of said court, on the first day of January, of each year, for the use of the public schools. All such moneys shall be used as other public school revenue. This section shall not apply in any county in which the district court has been established. This section is repealed effective January 1, 1971. (1955, c. 1372, art. 10, s. 9; 1969, c. 1190, s. 53.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, added the third and fourth sentences.

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ 115-116. Purposes for which elections may be called.

The clear intent of this article is to provide a method by which the county commissioners may be compelled to call an election to obtain a tax levy or for other purposes. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries.—In levying an additional tax for

the purpose of supplementing teachers' salaries pursuant to § 115-80 (a), the board of county commissioners acts as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools, and there is no requirement that such levy be submitted

to a vote of the people, the limitations imposed by N.C. Const., Art. VII, § 6, being applicable solely to municipalities and not to agencies of the State. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

None of the statutes in this article would prohibit the county commissioners, upon a proper finding of necessity, from

levying an additional tax to supplement the current expense fund for the purpose of supplementing teachers' salaries, if the county commissioners are otherwise authorized to do so. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Cited in *Harris v. Board of Comm'rs*, 274 N.C. 343, 163 S.E.2d 387 (1968).

§ 115-121. Action of board of county commissioners or governing body of municipality.

Opinions of Attorney General. — Mr. Robert L. Edwards, Superintendent, Madison County Public Schools, 10/3/69.

§ 115-122.1. Effective date; levy of taxes.

Opinions of Attorney General. — Mr. Rom B. Parker, Halifax County Attorney, 7/29/69.

§ 115-124. Levy and collection of taxes.

Cited in *Harris v. Board of Comm'rs*, 274 N.C. 343, 163 S.E.2d 387 (1968).

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

School Sites and Property.

§ 115-125. Acquisition of sites.—County and city boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the administrative unit; but no school may be operated by an administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site for a school, school building, school bus garage or for a parking area for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of article 2, chapter 40 of the General Statutes, and the determination of the county or city board of education of the land necessary for such purposes shall be conclusive; provided that not more than a total of fifty (50) acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516.)

Editor's Note. — The 1969 amendment substituted "fifty (50) acres" for "thirty (30) acres" in the proviso at the end of the section. It also eliminated a former second proviso, applicable to any school administrative unit located within a county having a population of 150,000 or more.

For an article urging revision and recod-

ification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Opinions of Attorney General. — Mr. W. Earl Britt, Attorney for Fairmont Board of Education, 7/24/69.

Applied in *Hobbs v. County of Moore*, 267 N.C. 665, 149 S.E.2d 1 (1966).

§ 115-126. Sale, exchange or lease of school property; easements and rights-of-way.

Local Modification.—City of Asheboro, as to subsection (e): 1969, c. 233.

Cross Reference.—As to sale, lease, ex-

change and joint use of governmental property by State and local governmental units, see § 160-61.2.

§ 115-128. Vehicles owned by boards of education exempt from taxation; registration.

Local Modification.—City of Greensboro:
1969, c. 973.

§ 115-129. Provisions for school buildings and equipment.—It shall be the duty of the boards of education of the several administrative school units of the State to make provisions for the nine months' school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a county or city board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for such school, then such city or county board of education is authorized to acquire and utilize as temporary classrooms for the operation of such school, relocatable or mobile classroom units, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which such school is located. The acquisition and installation of such units shall be subject in all respects to the provisions of chapter 143 of the General Statutes. The provisions of chapter 87, article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to county and city boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections. (1955, c. 1372, art. 15, s. 5; 1969, c. 1022, s. 1.)

Editor's Note. — The 1969 amendment added the second paragraph.

Session Laws 1969, c. 1022, s. 2, provides: "This act shall be retroactive in its application and shall apply to all proceedings where offers have been submitted and bids have been obtained and to all contracts for the acquisition of such relocatable, temporary, mobile classrooms whether same have been delivered or not."

Board of Education Presents Needs to Commissioners.—Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Courts Cannot Interfere with Discretion of Board of Education Unless Abused.—The board of education determines, in the first instance, what buildings require re-

pairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine, etc.—

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere, etc.—

The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and

having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of ed-

ucation. *Dilday v. Beaufort County Bd. of Educ.*, 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

§ 115-131. Board cannot erect or repair building unless site is owned by board.

Opinions of Attorney General. — Mr. Frederick K. Walter, Assistant Superin-

tendent, Alamance County Public Schools, 10/16/69.

§ 115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.

—County and city boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding fifty dollars (\$50.00) for information leading to the arrest and conviction of any person or persons who wilfully deface, damage or destroy property, commit acts of vandalism or commit larceny of the property belonging to the public school system under the jurisdiction of and administered by any county or city board of education. The sums and amounts necessary to pay said rewards shall be an item in the current expense budget of said county or city board of education, and said reward shall be paid out of the current expense fund. (1967, c. 369.)

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. Contracts with teachers, principals, and other professional employees; termination of contracts; continuing contracts; notice.

—(a) Any person other than the superintendent desiring election as a teacher, principal, or other professional employee in a county or city school administrative unit shall file his or her application in writing with the county or city superintendent of such unit on such forms and in such manner as the superintendent and board of education may prescribe. A professional employee is defined as a person holding a position for which the State Board of Education has established certification requirements. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers, principals, and other professional employees before any salary vouchers shall be paid. The contracts shall be executed in duplicate, with one copy being retained by the superintendent and the other copy being retained by the employee, and no person shall be considered an employee unless he holds a properly executed contract. Proposed contracts tendered prospective employees must be executed and returned to the superintendent within 15 calendar days after date of delivery to the individual or to the post office or otherwise they shall be considered rejected. No county or city board of education shall enter into a contract for the employment of more personnel than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such personnel from local funds. All contracts shall be subject to the allotment of personnel by the State Board of Education and subject further to the condition that when the position for which the employee is employed is terminated the contract is likewise terminated.

(b) All contracts now or hereafter entered into between a county or city board of education and a teacher, principal, or other professional employee shall continue from year to year unless terminated as hereinafter set forth. When it shall have been determined by a county or city board of education that an employee is not to be retained for the next succeeding school year it shall be the duty of the county or city superintendent to notify the employee, by registered letter deposited in mails addressed to last known address or business address of employee prior to the close of the school year, of the termination of his contract. When it shall have been

determined that the services of an employee are not acceptable for the remainder of a current school year, and that the employee should be dismissed and relieved of his position immediately, the provisions and procedures of G.S. 115-67 and G.S. 115-145 shall be applicable. (1955, c. 664; 1967, c. 223, s. 1.)

Editor's Note. — The 1967 amendment rewrote this section, which formerly terminated all contracts of principals and teachers at the end of the 1954-1955 term and provided for employment on a yearly basis thereafter.

Section 3, c. 223, Session Laws 1967, provides: "This act shall be in full force and effect with the issuance of contracts for the 1967-1968 school term."

For note on racial discrimination in teacher hiring and firing, see 45 N.C.L. Rev. 166 (1966), commenting on *Wheeler v. Durham City Bd. of Educ.*, 363 F.2d 738 (4th Cir. 1966) and *Chambers v. Hendersonville City Bd. of Educ.*, 364 F.2d 189 (4th Cir. 1966).

There are no vested rights in regard to reemployment of public school teachers. *Johnson v. Branch*, 242 F. Supp. 721 (E.D.-N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Right to Employment for Another Year Is Distinguishable from Dismissal for Cause.—The right to be employed or reemployed for another school year is to be distinguished from the problem of dismissal of a teacher for cause. *Johnson v. Branch*, 242 F. Supp. 721 (E.D.-N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Reemployment of Teacher Is Discretionary.—The decision to reemploy a teacher in North Carolina for a subsequent school term is a matter of discretion vested in the principal, who makes the recommendation to the superintendent and board of education which approve it. However, professional personnel are not at the mercy of any whimsical or arbitrary decision school administrators or a county board of education may care to make regarding their retention or reemployment. *Wall v. Stanly County Bd. of Educ.*, 259 F. Supp. 238 (M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967) (decided prior to the 1967 amendment to this section).

But School Officials Must Act in Good Faith.—Those connected with school administration including the county boards of education and school principals, must act in good faith and not arbitrarily, capriciously, or without just cause or be activated by selfish motives. *Wall v. Stanly County Bd. of Educ.*, 259 F. Supp. 238

(M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967) (decided prior to the 1967 amendment to this section).

And Cannot Arbitrarily Deny Federally Protected Rights under Color of State Law.—The discretion of school officials in effectuating their hiring policies does not extend to an arbitrary denial of rights guaranteed by the federal Constitution and acts of Congress, when the denial is made under color of State law. *Johnson v. Branch*, 242 F. Supp. 721 (E.D.-N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Discharge of or Failure to Reemploy Negro Teachers.—It is firmly established in the fourth circuit (1) that the Fourteenth Amendment to the federal Constitution forbids the selection, retention, and assignment of public school teachers on the basis of race; (2) that reduction in the number of students and faculty in a previously all-negro school will not alone justify the discharge of or failure to reemploy negro teachers in a school system; (3) that teachers displaced from formerly racially homogeneous schools must be judged by definite objective standards with all other teachers in the system for continued employment; and (4) that a teacher wrongfully discharged or denied reemployment in contravention of these principles is, in addition to equitable remedies, entitled to an award of actual damages. *Wall v. Stanly County Bd. of Educ.*, 378 F.2d 275 (4th Cir. 1967); *North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ.*, 393 F.2d 736 (4th Cir. 1968).

A long history of racial discrimination, coupled with sudden disproportionate decimation in the ranks of negro teachers when desegregation is finally begun, gives rise to an imputation of racial discrimination in the failure to rehire negro teachers. Such circumstances cast the burden of proof on the school authorities to show that the failure to rehire was for nondiscriminatory reasons, and require that the proof be clear and convincing before the failure to rehire will be upheld. *North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ.*, 393 F.2d 736 (4th Cir. 1968).

When a system's needs change as a result of compliance with the basic law of the land outlawing racial discrimination, the equal protection clause will not permit the teachers so displaced to be treated as

new applicants to the system, unless all teachers, including those to be retained, are so treated. Those displaced teachers, absent good cause for the refusal to rehire, such as age or poor professional performance, must be given the same preference as to reemployment as that given to teachers not so displaced. *North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ.*, 393 F.2d 736 (4th Cir. 1968).

When the constitutional requirement of racial equality compels realignment of the allotment of teachers, that realignment may not serve as a vehicle for other forms of discrimination. *North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ.*, 393 F.2d 736 (4th Cir. 1968).

§ 115-143. Health certificate required for teachers and other school personnel.

Opinions of Attorney General. — Mr. Harry C. Corbin, Superintendent, Transylvania County Schools, 8/11/69.

§ 115-145. Removal of principals and teachers; revocation of certificate.

Cross Reference.—See note to § 115-142. **Opinions of Attorney General.** — Mr. Ray Morgan, Principal, New Salem Elementary School, 7/23/69.

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.—It shall be the duty of all teachers, including student teachers when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals, teachers, and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969, c. 638, ss. 2, 3.)

Editor's Note. — The 1969 amendment inserted "including student teachers when given authority over some part of the school program by the principal or super-

vising teacher" near the beginning of the first paragraph and inserted the reference to student teachers in the first sentence of the second paragraph.

§ 115-150.4. Refund of fees upon transfer of pupils.—(a) As used in this section:

- (1) "Month" shall mean twenty school days;
- (2) "First semester" shall mean the first ninety teaching days of the one-hundred eighty days of the school year;
- (3) "Second semester" shall mean the last ninety days of the one-hundred eighty days constituting the school year;
- (4) "Term" for the purposes of this section shall have the same meaning as that of first semester or second semester.

(b) In all cases where pupils of an administrative unit of the public school

system transfer to some other public school in another administrative unit or such pupils are compelled to leave the school in which they are enrolled because of some serious or permanent illness, or for any other good and valid reason, then such pupils or their parents shall be entitled to a refund of the fees and charges paid by them as follows:

- (1) If the transfer or departure of the pupil or pupils from the school in which they are enrolled takes place within one month after enrollment, then all such fees and charges shall be refunded in full;
- (2) If the transfer or leaving the school on the part of said pupil or pupils takes place after the first month and before the middle of the first semester, then one half of the fees for the first semester shall be refunded, and all fees and charges for the second semester shall be refunded.
- (3) If the pupil or pupils transfer or leave the school after the middle of the first semester, then no first semester fees or charges shall be refunded.
- (4) If the fees and charges on the part of such pupil or pupils have been paid for a year and such pupil or pupils transfer or leave the school at the end of the first semester or within the first month of the second semester, then all second semester fees and charges shall be refunded in full;
- (5) If the fees and charges herein described and set forth have been paid for one year, and the pupil or pupils transfer or leave the school before the middle of the second semester, then one half of the second semester fees shall be refunded;
- (6) The words "fees" and "charges" as used in this section shall not include any fees or charges paid for insurance or fees charged for expendable materials.
- (7) If the pupil or pupils transfer or leave the school after the middle of the second semester, then no fees shall be refunded.
- (8) If the amount of total refund as determined by this section shall be less than one dollar (\$1.00), no refund shall be paid.

(c) In all cases where semesters are designated as terms, the word "term" shall have the meaning as above set forth, and the refund shall be on the same basis as the semester refunds set forth in subsection (b).

(d) The principal shall be responsible for refunding fees and charges at the place of the collection of the fees and charges by check made payable to the parent or guardian of pupil or pupils leaving the school as noted in subsection (b). (1969, c. 756.)

ARTICLE 17A.

Interstate Agreement on Qualifications of Educational Personnel.

§ 115-151.1. **Purpose, findings, and policy.**—(a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their

professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower. (1969, c. 631, s. 1.)

Editor's Note.—Session Laws 1969, c. 631, s. 4, makes the act effective July 1, 1969.

§ **115-151.2. Definitions.**—As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

- (1) "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.
- (2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.
- (3) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.
- (4) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools, is acceptable in accordance with the terms of a contract made pursuant to § 115-151.3.
- (5) "Receiving state" means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to § 115-151.3.
- (6) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico. (1969, c. 631, s. 1.)

§ **115-151.3. Interstate educational personnel contracts.**—(a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this section only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:

- (1) Its duration,
- (2) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state,
- (3) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards,
- (4) Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states. (1969, c. 631, s. 1.)

§ 115-151.4. Approved and accepted programs.—(a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract. (1969, c. 631, s. 1.)

§ 115-151.5. Interstate cooperation.—The party states agree that:

- (1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to § 115-151.3 of this agreement.
- (2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification. (1969, c. 631, s. 1.)

§ 115-151.6. Agreement evaluation.—The designated state officials of any party state(s) may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes. (1969, c. 631, s. 1.)

§ 115-151.7. Other arrangements.—Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel. (1969, c. 631, s. 1.)

§ 115-151.8. Effect and withdrawal.—(a) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms. (1969, c. 631, s. 1.)

§ 115-151.9. **Construction and severability.**—This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (1969, c. 631, s. 1.)

§ 115-151.10. **Designated state official.**—For the purposes of the agreement set forth in this article the “designated state official” for this state shall be the State Superintendent of Public Instruction. He shall enter into contracts pursuant to § 115-151.3 only with the approval of the specific text thereof by the State Board of Education. (1969, c. 631, s. 2.)

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-153. **Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.**

Stated in North Carolina Teachers Ass'n
v. Asheboro City Bd. of Educ., 393 F.2d
736 (4th Cir. 1968).

§ 115-153.2. **Authority for payroll deductions for group insurance, credit union loans and association dues.**—(a) The State Board of Education may authorize and empower any county or city board of education, the board of trustees of any community college or technical institute, or other governing authority, within the State, to establish a voluntary payroll deduction plan for:

- (1) Premiums for any type of group insurance established and authorized by the laws of the State;
- (2) Amounts authorized by members of the State Employees' Credit Union or any local teachers' credit unions to be deposited with such organizations;
- (3) Loans made to teachers by credit unions.

(b) Any employee of any county or city board of education, any community college, technical institute, or of any educational association, may enter into a written agreement with his or her employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section. (1969, c. 591.)

§ 115-153.3. **Additional payroll deductions authorized; written consent to county or city administrative unit.**—Any public school teacher who is a member of a credit union organized and established under chapter 54 of the General Statutes may, by executing a written consent to the county or city administrative unit by whom employed, authorize periodical payment or obligation to such credit union to be deducted from their salaries or wages, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable. (1969, c. 890.)

Editor's Note. — The above section in Session Laws 1969, c. 890, is designated § 115-160.5. Since a § 115-160.5 had already

been added by Session Laws 1969, c. 638, the section added by c. 890 has been redesignated § 115-153.3.

ARTICLE 18B.

Student Teachers.

§ 115-160.5. **Student teacher and student teaching defined.**—A student teacher is any student enrolled in an institution of higher education approved by the State Board of Education for the preparation of teachers who is jointly assigned by that institution and a county or city board of education to student-teach under the direction and supervision of a regularly employed certified teacher.

Student teaching may include those duties granted to a teacher by G.S. 115-146 and any other part of the school program for which either the supervising teacher or the principal is responsible. (1969, c. 638, s. 1.)

§ 115-160.6. **Legal protection.**—A student teacher under the supervision of a certified teacher or principal shall have the protection of the laws accorded the certified teacher. (1969, c. 638, s. 1.)

§ 115-160.7. **Assignment of duties.**—It shall be the responsibility of a supervising teacher, in cooperation with the principal and the representative of the teacher preparation institution, to assign to the student teacher responsibilities and duties that will provide adequate preparation for teaching. (1969, c. 638, s. 1.)

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Census, Admissions and Attendance.

§ 115-162. **Age requirement and time of enrollment.** — Children to be entitled to enrollment in the public schools for the school year 1955-1956, and each year thereafter, must have passed the sixth anniversary of their birth before October first of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October first. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October first. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth.

Children are entitled to enroll in kindergarten programs in the public schools if they have passed the fifth anniversary of their birth before October 15 of the year in which they enroll and if they have presented themselves for enrollment during the first month of the school year. The State Board of Education may change the October 15 date if it deems necessary. (1955, c. 1372, art. 19, s. 2; 1969, c. 1213, s. 4.)

Editor's Note. — The 1969 amendment added the second paragraph.

§ 115-165. **Children not entitled to attend public schools.**—A child so severely afflicted by mental, emotional or physical incapacities as to make it unlikely for such child to substantially profit by instruction given in the public

schools shall not be permitted to attend the public schools of the State. When such child is presented for enrollment in a public school, it shall be the duty of the county or city superintendent of schools to have made the appropriate medical, social, psychological and educational examination of the child to determine whether the child can profit from attending the public schools. When appropriate the school superintendent also may consult with the local health director and county director of public welfare. Upon receipt of a report indicating that the child cannot substantially profit from instruction given in the public school, the county or city superintendent of schools is authorized to exclude the child from the public schools.

If the child is excluded from the public schools, the parent, person standing in loco parentis, or guardian of the child may appeal the superintendent's decision to the city or county board of education as the case may be. Such board of education may uphold the superintendent's decision to exclude the child or it may reverse the decision and order the child's enrollment. If it deems necessary, the board of education may require additional examination of the child. In the event the board upholds the superintendent's decision to exclude the child, the action of the board of education shall be the final administrative determination. The parent or guardian, however, shall have the right to appeal the school board's decision to the court under article 33 of chapter 143 of the North Carolina General Statutes. In all such cases in which a child is excluded from a public school, a complete record of the transaction shall be available to the parent, person standing in loco parentis, or guardian at their request. (1955, c. 1372, art. 19, s. 5; 1961, c. 186; 1965, c. 584, s. 17; 1969, c. 340.)

Editor's Note.—

The 1969 amendment rewrote this section.

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and sixteen years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. Provided, further that any child which is afflicted by mental, emotional, or physical incapacities so as to make it unlikely that such child could substantially profit by instruction given in the public schools, he or she need not be presented for enrollment upon presentation to the super-

intendent of city or county schools of evidence that medical, social, psychological and educational evaluation has been made showing that such child could not substantially profit by instruction in the public schools. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1.)

Editor's Note.—

The first 1969 amendment added the second proviso to the last paragraph of the section.

The second 1969 amendment deleted "and in which he is enrolled" following "assigned" in the first paragraph and also

deleted a proviso in the first paragraph exempting children from the requirement of that paragraph under certain circumstances, and inserted "could" preceding "substantially profit" near the beginning of the second proviso in the last paragraph.

§ 115-169. Violation of law; penalty. — Any parent, guardian or other person violating the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days, or both, in the discretion of the court. (1955, c. 1372, art. 20, s. 4; 1969, c. 799, s. 2.)

Editor's Note. — The 1969 amendment rewrote the provisions relating to punishment.

§ 115-172. Deaf children and blind children to attend school; age limits; minimum attendance.—Every deaf child and every blind child between the ages of six and eighteen years of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school that has an approved program for the deaf or the blind, or in the case of a blind child, such child may attend a public school, for a term of not less than nine months each year. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf or public school as herein provided. As to any deaf child, or any blind child not attending a public school as herein provided, the superintendent of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from his custody any such blind or deaf child whenever such discharge seems necessary or proper. Such discharge or exemption shall be reviewed by the board of directors upon petition by the parent, guardian, or other interested person or the child who has been exempted or discharged; provided, however, that such board shall not be required to review such discharge or exemption more than once during each calendar year. Whenever a blind or deaf child shall reach the age of eighteen years and is still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of twenty-one, unless he becomes capable of self-support at an earlier date. (1955, c. 1372, art. 20, s. 7; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-173. Parents, etc., failing to enroll deaf child in school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any deaf child or children between the ages of six and eighteen years failing to enroll such deaf child or children in some school for instruction as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf shall in his discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parent, guardian, or custodian shall constitute a con-

tinuing offense and shall not be barred by the statute of limitations. (1955, c. 1372, art. 20, s. 8; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind or public school shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. This section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the superintendent of some school for the instruction of the blind shall in his discretion serve written notice on such parents, guardians, or custodians directing that such child be sent to the said school or to a public school, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parents, guardians, or custodians shall constitute a continuing offense and shall not be barred by the statute of limitations. The authorities of the Governor Morehead School shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1955, c. 1372, art. 20, s. 9; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-175. School superintendent to report blind and deaf children. — It shall be the duty of the county and city school superintendents to report the names and addresses of parents, guardians, or custodians of any deaf or blind children residing within their respective school administrative units to the superintendent of the institution provided for each. Such report also shall be made to the Department of Public Instruction. (1955, c. 1372, art. 20, s. 10; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

ARTICLE 21.

Assignment and Enrollment of Pupils.

§ 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.

Constitutionality.—

Although this article has been declared facially constitutional, when such a statute is applied to discriminate against negro pupils, it is given an unconstitutional application. Criteria may not be used to screen and deny negro applicants to a particular school if they are not used in the same manner to screen and deny white applicants similarly situated. *Felder v. Harnett County Bd. of Educ.*, 349 F.2d 366 (4th Cir. 1965).

Power of Local Boards Is Only Subject to Standards and Limitations of This Article.—The State has entrusted to the county and city boards of education the "full and complete" power to assign and reassign each child residing within its unit to a public school, subject only to the standards and limitations prescribed by the Pupil Assignment Law, including the power of the

courts of North Carolina to hear de novo an appeal from the final order of the board and, thereupon, to enter the appropriate order. In *re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

This article imposes upon the school board, and upon the courts on appeal from it, a solemn duty, for in applying this article to the application for the reassignment of a child, the board is dealing with an asset of the State which cannot be valued in the terms of the market place. In *re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

Which Board May Not Delegate.—The Pupil Assignment Law does not authorize the school board to abdicate or delegate its duty to exercise the power so entrusted to it for the best interests of the applying child. In *re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

Hence, Board May Not Transfer Its Power to Federal Employee.—The school board may not, in the hope of receiving money for its school, shut its eyes to the mandate of the statute. It may not, by contract or otherwise, transfer its power to an employee of the federal government, or bind itself to exercise it as he may direct, or in any other manner than that provided in this article, or for any purpose other than that for which the State conferred the power upon it. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Other Factors Than Mixture of Races May Be Considered.—There is no constitutional requirement that the school board act with the conscious purpose of achieving the maximum mixture of races in the school population. The Constitution permits the board to consider natural geographic boundaries, accessibility of particular schools, and many other factors which are unrelated to race. So long as the boundaries are not drawn for the purpose of maintaining racial segregation, the school board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 369 F.2d 29 (4th Cir. 1966).

Assignment to School outside Administrative Unit.—

The legislature contemplated agreements between boards acting within the framework of the statute and free to accomplish its purpose—the assignment of the individual child to the school where his or her “best interest” would be served without disruption of that school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

§ 115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited.—No person shall be refused admission into or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

The board of one administrative unit cannot assign a child to a school in another administrative unit without the consent of the board of the other unit. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Under the Pupil Assignment Law, as amended in 1956, the board of education of one city or county administrative unit may not permit to be enrolled in one of its schools a child who resides in the territory of another unit solely upon its own willingness to do so, plus the desire of the child or its parents to attend that school. Nothing else appearing, the assent of the board of the unit in which the child resides must be obtained. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The requirement that a child residing in one unit may not be placed in school in another unit without the assent of his resident unit's board is a protection to each unit against raids upon its student body by another unit so as to gain additional teacher allotment by the State on account of increased enrollment, or so as to gain accomplished athletes, or for any other purpose. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is not within the fair intendment of this law that a board may enter into an agreement with some other agency or person that, come what may and regardless of the welfare of the applying child, the board will never agree to assign any child to any school in another county. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Cited in *Huggins v. Wake County Bd. of Educ.*, 272 N.C. 33, 157 S.E.2d 703 (1967).

The provisions of this article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)

§ 115-177. Methods of giving notice in making assignments of pupils.

Cited in *Huggins v. Wake County Bd. of Educ.*, 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-178. Application for reassignment; notice of disapproval; hearing before board.

Cross Reference.—See note to § 115-176.

And Emphasis Is on Welfare of Child, etc.—

In accord with original. See *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the best interest of the applying child which must guide the deliberations and control the decision of the board, unless the granting of the application will interfere with the proper administration of the school to which the child seeks reassignment or will endanger the proper instruction, the health or the safety of the other children enrolled therein. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

No Agreement Can Authorize Board to Deny Reassignment Required by Statute.—

No agreement of the board with anyone, be he an employee of the federal government or otherwise, can authorize the board to deny an application for reassignment which the legislature, by a statute within

its authority to enact, has provided that the board shall grant. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

When Reassignment Must Be Made.—

It is the duty of the board to reassign if the reassignment of the child to a new school will be for the best interest of the child and will not interfere with the proper administration of the school. *In re Varner*, 266 N.C. 409, 146 S.E.2d 401 (1966).

System of Free Transfers Held Constitutionally Permissible.—Where a system of free transfers is the only means by which

many negroes can attend integrated schools, and each pupil in the system has the option, the existence of the right of transfer is constitutionally permissible. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 369 F.2d 29 (4th Cir. 1966).

Cited in *Huggins v. Wake County Bd. of Educ.*, 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-179. Appeal from decision of board.—Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by an interested party or by the board to the appellate division in the

same manner as other appeals are taken from judgments of such court in civil actions. (1955, c. 366, s. 4; 1969, c. 44, s. 73.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last sentence.

"De Novo".—

The Pupil Assignment Law provides that, upon appeal from the board to the superior court, the matter shall be heard de novo. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

In a matter being heard in the superior court de novo, it is as if it were before the court in the first instance. That is, the court has the same powers, the same duties, and the same standards to guide it as the board had in the first instance. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

No agreement of the board can deprive the courts of this State of jurisdiction conferred upon them by this section, or bar the court, before which an appeal from the board's order is brought as provided by this section, from entering the judgment prescribed in such case by this section. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

And Courts Will Determine Right to Reassignment According to Statutory Standards.—So long as the Pupil Assignment Law remains the law of North Carolina, the courts of this State in passing

upon appeals from orders of the boards of education concerning applications for the reassignment of children to the public schools, will determine the right to reassignment in accordance with the standards prescribed by the statute, not pursuant to agreements between the board and another or letters from such other party setting forth his ex parte construction of the alleged agreement. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Power of Superior Court.—

On appeal, the superior court has the authority to reassign the child to the school which he and his parents want him to attend, if that is in the best interest of the child and the child's enrollment therein will not interfere with the proper administration of that school or endanger the instruction, the health or the safety of the other pupils there enrolled. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Upon appeal, the superior court has the authority to reassign the child to a school of another administrative unit, even though the board of education of the administrative unit wherein the child resides objects. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. Authority of county and city boards of education.

State Board Relieved, etc.—

In accord with original. See Brown v.

Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

§ 115-183. Use and operation of school buses.

- (5) County or city boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. County or city boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire

school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

- (6) Under rules and regulations to be adopted by the board of education, school buses owned by said board may also be used for the evacuation of pupils and other school employees when such an evacuation is jointly authorized and directed by State and county or city civil defense directors; provided, the State Board of Education shall not be liable for operating costs nor for any compensation claims or tort claims incurred as a result of such an evacuation; provided further when buses are used for such civil defense purposes, the local civil defense agency in the area in which such evacuation tests are conducted shall be liable for operating costs and shall provide liability insurance for the full protection of the pupils and all school employees taking part in such evacuation tests and for all other compensation claims or tort claims incurred as a result of such evacuation. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47.)

Local Modification.—Buncombe: 1967, c. 480.

Editor's Note.—The 1969 amendment, effective July 1, 1969, added present subdivision (5) and deleted the former first sentence in present subdivision (6), relat-

ing to the use of school buses for field trips and for transportation to health clinics and to certain concerts.

As the rest of the section was not affected by the amendment, it is not set out.

§ 115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities.—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality.

In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that two or more municipalities have consolidated and the corporate limits of the new, consolidated municipality includes such area, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been consolidated and had not been included within the corporate limits of the new, consolidated municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4; 1967, c. 877.)

Editor's Note.—

The 1967 amendment added the second paragraph.

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-198. Standard course of study for each grade. — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. In the course of study adopted by the State Board, the Board may establish a program of continuous learning based upon the individual child's need, interest, and stages of development, so that the program has a nongraded

structure of organization. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of alcoholism and narcotism.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1; 1969, c. 487, s. 1.)

Editor's Note. — The 1969 amendment added the second sentence.

§ 115-198.1. State kindergarten program. — The State Board of Education shall initiate in each of the eight educational districts, as defined in G.S. 115-3, a State public kindergarten program for five-year-olds in as many schools and for as many pupils as funds appropriated for this purpose will permit. The kindergarten program shall be operated and administered in accordance with rules and regulations adopted by the State Board, upon the recommendation of the State Superintendent of Public Instruction.

Funds appropriated for this program may be used to implement the following objectives:

- (1) To provide for the establishment and operation of public kindergarten programs;
- (2) To stimulate the establishment of educational technology programs in the area of early childhood education in the State teacher training institutions and in the community colleges;
- (3) To provide scholarships and grants-in-aid to teachers to permit their attendance at schools and workshops offering instruction in kindergarten education;
- (4) To provide services in the Department of Public Instruction in kindergarten education in order that the Department might provide guidance and direction to the program and develop appropriate standards of instruction for all kindergarten programs operating within the State. (1969, c. 1213, s. 1.)

ARTICLE 25.

Selection and Adoption of Textbooks.

§§ 115-206 and 115-207 to 115-215: Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 25A.

Textbooks and Instructional Material.

§ 115-206.1. Textbook needs are determined by course of study.— When the State Board of Education has adopted, upon the recommendation of the State Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks. Textbooks adopted in accordance with the provisions of this article

shall be used by the public schools of the State. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1.)

Editor's Note. — Session Laws 1969, c. 519, repealed former Articles 25, containing §§ 115-206 to 115-215, and 26, containing §§ 115-216 to 115-228, and enacted this article in their stead. Where appropriate, the historical citations to the sections of the repealed articles have been added to the sections of the new article.

§ 115-206.2. State Board of Education to select and adopt textbooks.—The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1.)

§ 115-206.3. Appointment of Textbook Commission.—Shortly after assuming office, the Governor, upon recommendation of the State Superintendent, shall appoint a Textbook Commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Six of the members shall be teachers or principals in the elementary grades; five shall be teachers or principals in the high school grades; and one shall be a superintendent of a county or city school administrative unit. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance of their duties at rates specified in G.S. 138-5 (b). (1955, c. 1372, art. 24, s. 3; 1969, c. 519, s. 1.)

§ 115-206.4. Commission to evaluate books offered for adoption.—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the category for which he is responsible.

The evaluation report shall give special consideration to the suitability of the book to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1.)

§ 115-206.5. Selection of textbooks by Board.—At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall then request sealed bids from the publishers on the selected books.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation causes, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1.)

§ 115-206.6. Adoption of textbooks and contracts with publishers.—The publishers' sealed bids shall be opened in the Board's presence at the next regular meeting after the Board has requested the submission of bids. The Board may then adopt the books required by the courses of study and enter into

contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1.)

§ 115-206.7. Continuance and discontinuance of contracts with publishers.—When an existing or future contract expires, the Board may, with the publisher's approval, continue the contract for any particular book or books for a period not less than one or more than five years. If a publisher desires to terminate a contract that has been extended beyond the original contract period, he shall give notice to the Board ninety days prior to May 1. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ 115-206.8. Procedure for change of textbook.—The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give the publisher ninety days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ 115-206.9. Advice from and suits by Attorney General. — The form and legality of contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General.

When requested by the Board, the Attorney General shall bring suit against any publisher who fails to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract. The suit shall be brought for an amount sufficient to enforce the contract or to compensate the State for any loss sustained by the publisher's failure to keep his contract. (1955, c. 1372, art. 24, s. 8; 1969, c. 519, s. 1.)

§ 115-206.10. Publishers to register. — Any publisher who submits books for adoption shall register in the office of the State Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1.)

§ 115-206.11. Sale of books at lower price reduces price to State.—Every contract made by the Board with the publisher of any school textbook on the state-adopted list shall be deemed to have written therein a condition providing that if that publisher, during the life of his contract with this State, contracts with any other governmental unit or places that textbook on sale anywhere in the United States for a price less than that stipulated in his contract with the State of North Carolina, the publisher shall immediately furnish that textbook to this State at a price not greater than that for which the book is furnished, sold, or placed on sale anywhere else in the nation. (1955, c. 1372, art. 24, s. 10; 1969, c. 519, s. 1.)

§ 115-206.12. Powers and duties of the State Board of Education in regard to textbooks.—The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

- (1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds

necessary to meet the needs of the State's public school system and to carry out the provisions of this article.

- (2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than that operated by the State Board of Education.
- (3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1.)

§ 115-206.13. State Board of Education authorized to discontinue handling supplementary and library books.—The State Board of Education may discontinue the adoption of supplementary textbooks and, at the expiration of existing contracts, may discontinue the purchase, warehousing, and distribution of supplementary textbooks. The Board may also discontinue the purchase and resale of library books. Funds appropriated to the State Board of Education for supplementary textbooks shall be transferred to the State Nine Months School Fund for allotment to each school administrative unit, based on its average daily membership, for the purchase of supplementary textbooks, library books, periodicals, and other instructional materials. (1969, c. 519, s. 1.)

§ 115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.—(a) Local boards of education shall adopt rules and regulations not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in its school administrative unit for the selection and procurement of supplementary textbooks, library books, periodicals, and other instructional materials needed for instructional purposes in the public schools of that unit. Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1.)

§ 115-206.15. Legal custodians of books furnished by State. — Local boards of education are the custodians of all books furnished by the State. They shall provide adequate and safe storage facilities for the proper care of these books and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1.)

§ 115-206.16. Rental fees for textbooks prohibited; damage fees authorized.—No local board of education may charge any pupil a rental fee for the use of textbooks. Damage fees may be charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education. All money collected on state-owned books as damage fees or from the sale of books under the provisions of this article shall be paid quarterly as collected to the State Board of Education. (1969, c. 519, s. 1.)

§ 115-206.17. Duties and authority of superintendents of local administrative units. — The superintendent of each administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this article and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and monies may be accounted for properly. If any principal or teacher fails to comply with the provisions of this

section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1.)

§ 115-206.18. Right to purchase.—Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the public schools of the State from the board of education of the school administrative unit in which the child is enrolled or, in the case of basis textbooks, from the State Board of Education. (1955, c. 1372, art. 25, s. 2; 1969, c. 519, s. 1.)

ARTICLE 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§§ 115-216 to 115-228: Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 27.

Vocational Education.

§ 115-234. Cooperation of county and city authorities with State Board.

Constitutionality. — A county technical institute which provides adult vocational and general educational training is a part of the public school system of the State, and the expenditure of funds by a county as authorized by this section for maintenance of a building used by such technical institute does not violate N.C. Const., Art. IX, § 5. *Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ.*, 4 N.C. App. 617, 167 S.E.2d 538 (1969).

The expenditure of funds by a county for maintenance of a building used by a county technical institute is fully authorized by statute and is not at odds with the meaning or purpose of N.C. Const., Art. IX, § 5. *Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ.*, 4 N.C. App. 617, 167 S.E.2d 538 (1969).

§ 115-235.1. Development of program in middle and lower grades.—The State Board of Education shall develop, upon the recommendation of the State Superintendent of Public Instruction, prevocational and industrially oriented practical arts programs for the middle grades of the public school system as funds appropriated for this purpose will permit. A program of instruction interwoven into the curriculum, providing a thorough introduction to the world of work, may also be developed for the lower grades. (1969, c. 1180.)

ARTICLE 33.

Safety Devices Required.

§ 115-258. Eye protection devices required in certain courses.—The governing board or authority of any public or private school or educational institution within the State, wherein shops or laboratories are conducted providing instructional or experimental programs involving:

- (1) Hot solids, liquids or molten metals; or
- (2) Milling, sawing, turning, shaping, cutting, or stamping of any solid materials; or

- (3) Heat treatment, tempering, or kiln firing of any metal or other materials;
or
- (4) Gas or electric arc welding; or
- (5) Repair or servicing of any vehicle; or
- (6) Caustic or explosive chemicals or materials,

shall provide for and require that every student and teacher wear industrial quality eye protective devices at all times while participating in any such program. These industrial quality eye protective devices shall be furnished free of charge to the student and teacher. (1969, c. 1050, s. 1.)

Editor's Note. — Session Laws 1969, c. 1050, s. 6, makes the act effective July 1, 1969.

Former article 33 of this chapter, containing sections numbered 115-258 through

115-260, and relating to the authority of the State Board of Education to license certain institutions and regulate degrees, was repealed by Session Laws 1963, c. 448, s. 27.

§ 115-259. Visitors to wear eye safety devices.—Visitors to such shops and laboratories shall be furnished with and required to wear such eye safety devices while such programs are in progress. (1969, c. 1050, s. 2.)

§ 115-260. "Industrial quality eye protective devices" defined.—“Industrial quality eye protective devices,” as used in § 115-258, means devices meeting the standards of the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968 approved by the U.S.A. Standards Institute, Inc. (1969, c. 1050, s. 3.)

§ 115-260.1. "Corrective-protective" devices.—In those cases where “corrective-protective” devices that require prescription ophthalmic lenses are necessary, such devices shall only be supplied by those persons licensed by the State to prescribe or supply “corrective-protective” devices. (1969, c. 1050, s. 4.)

ARTICLE 35.

Education Expense Grants.

§§ 115-274 to 115-295: Repealed by Session Laws 1969, c. 1279.

ARTICLE 38A.

Education for Hearing-Impaired Children in the Public Schools.

§ 115-315.1. Purpose of article.—It is the purpose of this article to provide, in the public schools of North Carolina, a comprehensive program for hearing-impaired children of preschool age so that such preschool children may be taught and instructed during the critical learning years, and to provide likewise a comprehensive program in the public schools of this State for school age children who, while not deaf, have some degree of hearing impairment which calls for and lends itself to special instruction in the public schools implemented by trained teachers and special equipment. It is further the purpose of this article to provide a system for the identification and professional evaluation of preschool children who have impaired hearing.

It is deemed advantageous that hard-of-hearing children of school age be, as far as is possible, educated in a normal public school environment in their home community and in the presence of children not handicapped by hearing impairment rather than in the isolation of special programs away from the home community and local environment. At the same time the General Assembly recognizes the continuing and strong need for the State's residential schools for the deaf and affirms continued support in such schools. It is not the purpose of this article to duplicate in any manner the function of the residential schools for the deaf. (1969, c. 1166, s. 1.)

§ 115-315.2. **Definitions.**—Unless the context of this article otherwise requires:

- (1) “Deaf” shall mean those children in whom the sense of hearing is non-functional for the ordinary purposes of life. The term is inclusive both of congenitally deaf and adventitiously deaf.
- (2) “Hard-of-hearing” means those children in whom the sense of hearing, although defective, is functional with or without the hearing aid.
- (3) “Hearing-impaired” is inclusive both of the deaf and the hard-of-hearing and includes any child in whom there is some substantial degree of hearing impairment which calls for special instruction or special equipment in the learning processes. (1969, c. 1166, s. 1.)

§ 115-315.3. **Organization of program; rules and regulations; eligibility for instructional training; information to local school units.**—There shall be organized and administered by the State Superintendent of Public Instruction and the State Board of Education, under the general supervision of the State Superintendent of Public Instruction, a program for the education of hearing-impaired children residing within the State. Such program shall be available to all preschool hearing-impaired children between the ages of one and six and shall be available for all hard-of-hearing children of school age. Such program shall be a continuing program and shall commence during the school year 1969-70. The State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall formulate reasonable rules prescribing the program and procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation on the basis of adequate individual audiology, medical evaluation and other related factors. Provided, however, children who are of school age and who are, upon medical evaluation, found to be deaf, may be instructed in the North Carolina Schools for the Deaf. In order to assure maximum participation by local school administrative units, full information on the rules and regulations and pertinent information shall be forwarded to the local school unit in time for them to meet the requirements in qualifying for participation in the program.

The State Superintendent of Public Instruction in prescribing the procedures for the operation and maintenance of a program under this article, shall distinguish between the program for preschool children, which program shall be available to all hearing-impaired children of preschool age, and the program for school age children. (1969, c. 1166, s. 1.)

§ 115-315.4. **Authority of local school board to establish programs; joint operations; duty of local superintendent.**—County and city boards of education are hereby authorized to establish programs for preschool hearing-impaired children and hard-of-hearing school age children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such program. When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the preschool aged children residing in said unit for the purpose of determining the identity of the hearing-impaired. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such hearing-impaired children within the administrative unit when they shall come to his attention. All preschool children included in the program shall first be afforded an otological and audiological examination. (1969, c. 1166, s. 1.)

§ 115-315.5. **Expenditure of State and local funds; gifts.**—In addition to such other funds as may be available for their purpose, county and city boards of education establishing programs for the preschool age hearing-impaired and

school age hard-of-hearing under this article are authorized to expend therefor any State or local funds appropriated to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. Any funds received by way of gift for use of the hearing-impaired program, shall be faithfully accounted for the same as if such funds were public funds. County and city boards of education are authorized to include in their capital outlay and current expense budgets, funds to facilitate the establishment, maintenance and operation of programs pursuant to this article, and the tax levying authorities of the counties and municipalities involved are authorized to levy proper taxes therefor. (1969, c. 1166, s. 1.)

§ 115-315.6. Request for teachers and other allotments from State Board; disapproval of request; transfer of funds.—When the county or city board of education in any administrative unit or units shall approve the establishment of an instruction program for preschool age hearing-impaired children and for the school age hard-of-hearing in said unit or units, it may thereupon request from the State Board of Education an allotment of teachers for the program and such other allotments as may be applicable to the program. When such programs in a unit or a combination of units meets the rules and regulations prescribed in accordance with the State Board of Education, the State Board may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund. Whenever a request is disapproved either by failure to qualify under the rules and regulations established under authority of G.S. 115-315.3 or because of lack of funds, the reason for such disapproval shall be certified by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units making the request. (1969, c. 1166, s. 1.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

ARTICLE 40.

Governor Morehead School.

§ 115-321. Incorporation, name and management. — The institution for the education of the blind, located in the city of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of a board of directors and superintendent. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

Revision of Article.—Session Laws 1969, c. 749, s. 2, rewrote this article, substituting present §§ 115-321 to 115-334 for former §§ 115-321 to 115-335. No attempt has been made to point out the changes ef-

fect by the 1969 act, but the historical citations to the former sections have been added to corresponding sections of the new article.

§ 115-322. Directors; appointment; terms; vacancies. — (a) There shall be eleven directors of the Governor Morehead School at Raleigh, to be appointed by the Governor. The terms of the directors shall be six years from their appointment and until their successors are appointed and qualified except that:

- (1) All directors previously appointed and presently serving shall continue to serve until the expiration of their respective terms.
- (2) As the terms of the present board expire, their successors shall be selected so that the terms of four directors shall expire two years from the date of appointment; the terms of four directors shall expire four years from the date of appointment; and the terms of three directors shall expire six years from the date of appointment.

(3) Thereafter, all terms shall be six years, beginning with the date of appointment for succeeding terms.

(b) The Governor shall transmit to the Senate during each session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. The Governor shall fill all vacancies. All appointees by the Governor filling any vacancies shall be for the duration of the unexpired term of the office vacated. (Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; Rev., s. 4188; C. S., s. 5873; 1925, c. 306, ss. 10, 13, 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-323. Chairman, executive committee, and other officials; election, terms, and salaries.—The board of directors shall organize by electing one of its members chairman, and in addition shall elect two additional members of the board who shall serve with the chairman as the executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent who shall be ex officio secretary of the board, and whose term of office shall be for three years; and such officers, agents and teachers as shall be deemed necessary. The compensation for officers, other than the superintendent, agents and teachers shall be fixed by the State Personnel Department upon the recommendation of the superintendent. (1881, c. 211, s. 3; Code, § 2229; Rev., s. 4189; 1917, c. 35, ss. 1, 2; C. S., s. 5874; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279.)

Editor's Note. — Session Laws 1969, c. 1279, deleted the last sentence, relating to designations of head teachers, in the section as it stood before its amendment by Session Laws 1969, c. 749. The section is set out above as it appears in c. 749.

§ 115-324. Meetings of the board and compensation of the members.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and they shall also be paid the same per diem for attending meetings of the board as is provided for boards of other State institutions. (1881, c. 211, s. 4; Code, s. 2230; Rev., s. 4190; C. S., s. 5875; 1943, c. 608, s. 1; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-325. Admission of pupils; how admission obtained.—The board of directors shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State, not of confirmed immoral character, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of six and eighteen years. Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the board of directors finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution. Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. Until schools for the deaf at Wilson and Morganton are complete and ready to receive deaf students, such deaf students who normally would attend the Governor Morehead School, shall be received and educated therein. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279.)

Editor's Note. — Session Laws 1969, c. 1279, deleted "white" preceding "blind children" and "and in the department of colored all colored deaf-mutes and blind children" following "blind children" near the beginning of the section as it stood before its amendment by Session Laws 1969, c. 749. The section is set out above as it appears in c. 749.

§ 115-326. **Admission of curable blind.**—It shall be the duty of the directors of the Governor Morehead School to admit into such institution from time to time, provided space is available, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-327. **Admission of pupils from other states.**—The board may, on such terms as it deems proper and upon the receipt of tuition and necessary expenses as prescribed by the board, admit as pupils persons of like infirmity from any other state but such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-328. **Board may confer diplomas.**—The board may, upon the recommendation of the superintendent and faculty, confer such diplomas or marks of achievement upon its graduates as it may deem appropriate to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-329. **Election of officers.** — The board of directors shall elect the superintendent of the school for a term of three years. The term of the present superintendent shall continue until July 1, 1969, and thereafter until his successor shall be elected and qualified. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution, and he shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (1881, c. 211, s. 8; Code, s. 2234; 1889, c. 539; 1893, c. 137; 1901, c. 707, s. 2; Rev., s. 4195; 1917, c. 35, s. 1; C. S., s. 5880; 1943, c. 425; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-330. **State Treasurer is ex officio treasurer of institution.** — The State Treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-331. **Reports of board to Governor.** — The board shall make a written, informal, annual report to the Governor and shall furnish any information which the Governor shall desire from time to time. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5882; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-332. **Removal of officers.**—The board shall have power to remove any officer, employee, or teacher for gross immorality, willful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused. The superintendent with the approval of the board shall fill all vacancies which may occur from any cause. (1881, c. 211, s. 10; Code, s. 2236; Rev., s. 4197; C. S., s. 5883; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-333. **Employees.**—The superintendent, subject to the control of the board, shall have power to employ all employees and recommend their compensation to the State Personnel Department for approval, and to discharge them at pleasure. (1881, c. 211, s. 11; Code, s. 2237; Rev., s. 4198; 1917, c. 35, s. 1; C. S., s. 5884; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-334. **When clothing, etc., for pupils paid for by county.**—Where it shall appear to the satisfaction of the Director of Public Welfare and the chairman of the board of county commissioners of any county in this State that the

parents of any blind child, residing in such county, are then unable to provide such child with clothing and/or traveling expenses to and from the Governor Morehead School, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses for such transportation and clothing, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ 115-335: Repealed by Session Laws 1969, c. 749, s. 2.

Revision of Article.—See same catchline in note to § 115-321.

ARTICLE 41.

State Schools for the Deaf.

§ 115-336. **Incorporation, name and location.**—There shall be maintained a school for the deaf children of the State which shall be a corporation under the corporate name of the North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina School for the Deaf shall be classed and defined as an educational institution: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution to some other name that will completely eliminate the word "deaf" from the name of said institution. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279.)

Editor's Note.—

The 1969 amendment deleted "white"

preceding "deaf children" near the beginning of the section.

§ 115-341. **Pupils admitted; education.**—The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all deaf children resident of the State not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of six and twenty-one years: Provided, that the board of directors may admit students under the age of six years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens and/or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby non-resident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279.)

Editor's Note.—

The 1969 amendment deleted "white"

preceding "deaf children" in the first sentence.

ARTICLE 42.

Central Orphanage of North Carolina.

§ 115-345. **Directors; selection, self-perpetuation, management of corporation.**—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said “The Central Orphanage of North Carolina.” The Governor of North Carolina shall appoint five citizens of Granville County as members of said board of directors, and the thirteen so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1969, c. 1279.)

Editor’s Note.—

The 1969 amendment deleted “white” preceding “citizens” in the second sentence.

§ 115-347. **Training of orphans.** — The said corporation shall receive, train and care for such orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28; 1969, c. 1279.)

Editor’s Note. — The 1969 amendment deleted “colored” preceding “orphan” near the beginning of the section.

SUBCHAPTER XIA. COMPACT.

ARTICLE 43.

Interstate Compact for Education.

§ 115-349. **Enactment of compact.**—The compact for education is hereby entered into and enacted into law, with all jurisdictions legally joining therein, in the form substantially as follows:

COMPACT FOR EDUCATION

Article I. Policy and Purpose.

It is the purpose of this compact to:

- (1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.
- (2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
- (3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
- (4) Facilitate the improvement of state and local educational systems so that

all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.

- (5) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.
- (6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

- (1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.
- (2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to

make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (10).

- (3) The commission shall have a seal.
- (4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.
- (5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.
- (6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.
- (7) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.
- (8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.
- (9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.
- (10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

- (1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.
- (2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.
- (3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

- (4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
- (5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.
- (6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation with Federal Government.

- (1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.
- (2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

- (1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.
- (2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

- (3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

- (1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.
- (2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.
- (3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (7) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III (7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.
- (5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties; Entry into and Withdrawal.

- (1) This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.
- (2) Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.
- (3) Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall pro-

vide to the commission an equitable share of the financial support of the commission from any source available to him.

- (4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020.)

§ 115-350. Establishment of North Carolina Education Council.—There is hereby established the North Carolina Education Council composed of the members of the education commission of the states representing this State, and not exceeding five other persons appointed by the Governor for terms of three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this State having the responsibilities for, knowledge with respect to, and interest in educational matters. The Governor shall serve as chairman of the North Carolina Education Council or any person that the Governor may designate shall serve as chairman. The chairman of the State Board of Education, the State Superintendent of Public Instruction, the chairman of the State Board of Higher Education, and the Director of Higher Education shall be ex officio members of the North Carolina Education Council. The Council shall meet on the call of its chairman or at the request of a majority of its members but in any event the Council shall meet not less than three times in each year. The Council may consider any and all matters relating to the recommendations of the education commission of the states and the activities of the members in representing this State thereon. (1967, c. 1020.)

§ 115-351. Filing copy of bylaws with Secretary of State.—Pursuant to Article III (9) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. (1967, c. 1020.)

SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

ARTICLE 44.

North Carolina Advancement School.

§ 115-352. Continuation of North Carolina Advancement School by the State Board of Education.—The State Board of Education shall have the responsibility of operating the North Carolina Advancement School at Winston Salem as a continuing phase of and in conjunction with the public school system of North Carolina. (1967, c. 1028, s. 2.)

Editor's Note. — Session Laws 1967, c. 1028, s. 4, makes the act effective July 1, 1967.

§ 115-353. **Purpose of the North Carolina Advancement School.**—The purpose of the North Carolina Advancement School is to provide a facility wherein there shall be carried on experimentation and research into the causes of and remedies for under achievement in the public schools of North Carolina. (1967, c. 1028, s. 2.)

§ 115-354. **Board of governors.**—The State Board of Education shall appoint and maintain for the school a governing board to be known as “the board of governors,” which shall be composed of 10 citizens of the State, one of whom shall always be the superintendent of the Forsyth County-Winston Salem schools. Except for the superintendent of the Forsyth County-Winston Salem schools, the board members shall serve for terms of not more than three consecutive years. The board of governors shall select from its membership annually a chairman and vice-chairman, and such board shall meet at least four times each year upon the call of its chairman. Members of the board shall receive the same per diem and shall be reimbursed for their expenses in the same manner as other boards and commissions generally. The director of the School shall serve as secretary to the board. (1967, c. 1028, s. 2.)

§ 115-355. **Responsibilities of the board of governors.**—Subject to the general supervision of the State Board of Education, the board of governors shall have the responsibility for

- (1) Determining the policies which shall govern the administration and supervision of the school,
- (2) Observing and reviewing all phases of the school’s operation, and
- (3) Reporting its findings and recommendations through the Superintendent of Public Instruction to the State Board of Education. (1967, c. 1028, s. 2.)

§ 115-356. **State Board of Education to appoint director.**—The State Board of Education shall appoint a director of the school who shall serve for such term, which may be indefinite, as the State Board shall determine. (1967, c. 1028, s. 2.)

§ 115-357. **Responsibilities of the director.**—In accordance with the policies of the board of governors, the director shall have responsibility for

- (1) Administering and directing all the affairs of the school,
- (2) Recommending to the board of governors the number and types of positions required to staff the school,
- (3) Selecting and recommending to the board of governors all personnel, including consultants to be employed or assigned to the school,
- (4) The development and implementation of the curriculum of the school,
- (5) Developing procedures which will insure the continuous evaluation of all aspects of the school and its progress,
- (6) Recommending for approval of the board of governors any rental or lease agreements affecting the facility wherein the school is located,
- (7) Preparing and submitting to the State Board of Education through the board of governors the recommended budget for the operation of the school,
- (8) Developing procedures and techniques which will promote the articulation and coordination of the program of the school with that of the public schools throughout the State, and
- (9) Reporting periodically and systematically to the board of governors and the State Board of Education on the status of the school, and performing such other duties as the board of governors from time to time may find appropriate to his administrative position. (1967, c. 1028, s. 2.)

Cross Reference.—See Editor’s note to § 115-352.

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

Article 1.

General Provisions for State Administration.

Sec.

115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.

Article 2.

Local Administration.

Sec.

115A-9.1. Sale, exchange or lease of property.

Article 5.

Special Provisions.

115A-38.1. Special provisions for Onslow County Technical Institute.

ARTICLE 1.

General Provisions for State Administration.

§ 115A-1. **Statement of purpose.**—The purposes of this chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this chapter, shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools. (1963, c. 448, s. 23; 1969, c. 562, s. 1.)

Editor's Note. — The 1969 amendment added the second sentence.

§ 115A-2. **Definitions.**

- (2) The term "community college" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. Which offers the freshman and sophomore courses of a college of arts and sciences,
 - b. Which shall offer organized curricula for the training of technicians,
 - c. Which shall offer vocational, trade, and technical specialty courses and programs, and
 - d. Which shall offer courses in general adult education.
- (3) The term "industrial education center" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the area for which established, and
 - a. Which offers vocational, trade, and technical specialty courses and programs, and
 - b. Which shall offer courses in general adult education.

- (7) The term "technical institute" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
- a. Which offers organized curricula for the training of technicians,
 - b. Which shall offer vocational, trade, and technical specialty courses and programs, and
 - c. Which shall offer courses in general adult education. (1963, c. 448, s. 23; 1969, c. 562, s. 2.)

Editor's Note. — The 1969 amendment substituted "shall" for "may" throughout subdivisions (2), (3) and (7). As the rest of the section was not changed by the amendment, only subdivisions (2) (3) and (7) are set out.

§ 115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.—The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: To approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

The State Board of Education is authorized to enter into agreements with county and city boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this chapter for other institutions, subject to available funds.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

- (1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and
- (2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23; 1967, c. 652; 1969, c. 1294.)

Editor's Note.—The 1967 amendment inserted the third paragraph. capital outlay and for" in the second sentence of the third paragraph.

The 1969 amendment inserted "matching

ARTICLE 2.

Local Administration.

§ 115A-9.1. Sale, exchange or lease of property.—When in the opinion of the board of trustees of any institution organized under the provisions of this chapter, the use of any property, real or personal, owned or held by said board

of trustees is unnecessary or undesirable for the purposes of said institution, the board of trustees, subject to prior approval of the State Board of Education, may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1969, c. 338.)

ARTICLE 5.

Special Provisions.

§ 115A-38.1. Special provisions for Onslow County Technical Institute.—(a) The State Board of Education shall have authority to approve the conversion of the Onslow County Industrial Education Center to a technical institute, as defined in chapter 115A of the General Statutes of North Carolina.

(b) All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution as a technical institute.

(c) The Onslow County board of education is authorized to transfer without compensation to the board of trustees of the Onslow County Industrial Education Center the title to any real and personal property held by the board of education as the two boards may agree upon, either before or after the institution is converted to a technical institute.

(d) In the event that the State Board of Education shall approve the conversion of the Onslow County Industrial Education Center to a technical institute, within sixty days after the Board grants final approval, the Governor shall appoint four additional members to the board of trustees of the Onslow County Technical Institute in accordance with the provisions of §§ 115A-7 and 115A-8 (1) of the General Statutes of North Carolina. (1967, c. 279.)

ARTICLE 6.

Textile Training School.

§ 115A-39. Creation of board of trustees; members and terms of office; no compensation.—The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479.)

Editor's Note.—

The 1969 amendment substituted "nine" for "six" in the first sentence.

Chapter 116. Higher Education.

Article 1.

The University of North Carolina.

Part 2. North Carolina State University
at Raleigh.

Sec.

116-37.1. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.

Part 3B. The University of North Carolina
at Wilmington.

116-39.1. The University of North Carolina
at Wilmington.

Part 3C. The University of North Carolina
at Asheville.

116-39.2. The University of North Carolina
at Asheville.

Part 5. Miscellaneous Provisions.

116-44.3 to 116-44.9. [Reserved.]

Article 1A.

Regional Universities.

116-44.10. Regional universities.

116-44.11. East Carolina University.

116-44.12. Appalachian State University.

116-44.13. Western Carolina University.

116-44.14. North Carolina Agricultural and
Technical State University.

116-44.14A. Pembroke State University.

116-44.14B. North Carolina Central University.

116-44.14C. Elizabeth City State University.

116-44.14D. Fayetteville State University.

116-44.14E. Winston-Salem State University.

116-44.15. Designation of additional regional universities.

116-44.16. Future policy with respect to regional universities.

Article 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

116-45.1, 116-45.2. [Repealed.]

116-46.1A. Motor vehicle laws applicable to the campus of Western Carolina University; parking regulations.

Sec.

116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.

Article 4.

School for Professional Training in Performing Arts.

116-70. Applicable statutes generally; revenue bonds.

116-70.1. Other applicable statutes.

Article 15.

Educational Advantages for Children of World War Veterans.

116-149 to 116-153. [Repealed.]

Article 16.

State Board of Higher Education.

116-157. Vice-chairman and secretary.

Article 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

116-174.2. Grounds for revocation of scholarships.

Article 23.

State Education Assistance Authority.

116-209.1. Provisions in conflict.

116-209.2. Additional definitions.

116-209.3. Additional powers.

116-209.4. Authority to issue bonds.

116-209.5. Bond resolution.

116-209.6. Revenues.

116-209.7. Trust funds.

116-209.8. Remedies.

116-209.9. Negotiable instruments.

116-209.10. Bonds eligible for investment.

116-209.11. Additional pledge.

116-209.12. Credit of State not pledged.

116-209.13. Tax exemption.

116-209.14. Annual reports.

116-209.15. Merger of trust fund.

Article 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

116-212. Campus of state-supported institution of higher education subject to curfew.

116-213. Violation of curfew a misdemeanor; punishment.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-2. Consolidated University of North Carolina.

(b) Those three campuses of the University shall be designated respectively "The University of North Carolina at Chapel Hill," "North Carolina State University at Raleigh," and "The University of North Carolina at Greensboro"; and any general campus or campuses of the University hereafter established shall be designated "The University of North Carolina at (place name)." All statutory references to the three existing campuses of the University of North Carolina are amended to conform to the requirements of this section.

On July 1, 1965, the University of North Carolina at Charlotte shall become a campus of the University of North Carolina.

On July 1, 1969, the University of North Carolina at Wilmington shall become a campus of the University of North Carolina.

On July 1, 1969, the University of North Carolina at Asheville shall become a campus of the University of North Carolina. (1931, c. 202, s. 1; 1963, c. 448, s. 1; 1965, c. 31, s. 1; c. 213; 1969, c. 297, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, added the last two paragraphs of subsection (b). As subsection (a) was not changed by the amendment, only subsection (b) is set out

§ 116-7. Filling vacancies in board.—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the General Assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section, but shall not apply to members serving in any branch of the United States armed forces or in the military forces of any of the allies of the United States nor shall the place of any member of the board of trustees be declared vacant by reason of the absence of such member because of temporary service in the government of the United States or any of its agencies. (1804, c. 647, P. R.; 1805, c. 678, s. 2, P. R.; 1873-4, c. 64, s. 3; Code, s. 2622; 1891, c. 98; Rev., ss. 4271, 4272; 1907, c. 828; C. S., s. 5791; 1943, c. 175; 1969, c. 1126.)

Editor's Note. — The 1969 amendment added at the end of the section the provision as to temporary service in the government of the United States or any of its agencies.

§ 116-15. Functions of the University.—The University of North Carolina shall provide instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and shall be the primary state-supported agency for research in the liberal arts and sciences, pure and applied. The University shall provide instruction in the branches of learning relating to agriculture and the mechanic arts, and to other scientific and to classical studies. The University shall extend its influence and usefulness as far as possible to the persons of the State who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S., s. 5837; 1963, c. 448, s. 4; 1969, c. 532, s. 2.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, deleted the former third sentence, which provided that the University should be the only institution in the State system of higher education authorized to award the doctor's degree.

§ 116-20. Escheats to University.**Editor's Note.—**

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

When Real Property Escheats. — Real property escheats only when the owner dies

intestate or dies testate without disposing of the same by will and without leaving surviving any heir, kindred or spouse to inherit under the laws of this State. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968).

§ 116-22. Unclaimed personalty on settlements of decedents' estates without heirs shall be paid over or delivered to the University of North Carolina.**Recovery of Property Paid to University.**

—Lapse of time alone, absent a demand and refusal to pay, will not forfeit a just claim to recover property theretofore paid

to the University under this section and § 116-23 relating to the disposition of unclaimed property. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968).

§ 116-23. Other unclaimed personalty to University.**Recovery of Property Paid to University.**

—Lapse of time alone, absent a demand and refusal to pay, will not forfeit a just claim to recover property theretofore paid

to the University under § 116-22 and this section relating to the disposition of unclaimed property. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968).

§ 116-24. Certain unclaimed bank deposits to University.**Editor's Note.—**

For comment on escheat of intangible

property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

§ 116-25. Other escheats.

Editor's Note.—For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

Part 2. North Carolina State University at Raleigh.

§ 116-37.1. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.—In connection with the construction of, assembling of, use and operation of, any nuclear reactor now owned or hereafter acquired by it, North Carolina State University is hereby authorized and empowered to procure proper insurance against the hazards of explosion, implosion, radiation and any other special hazards unique to nuclear reactors, including nuclear fuel and all other components thereto. Further, North Carolina State University is authorized to enter into agreements with the United States Atomic Energy Commission prerequisite to licensing by that agency of nuclear reactors and to maintain as a part of such agreement or agreements appropriate insurance in amounts required by the Atomic Energy Commission of nuclear reactor licenses.

To the extent that North Carolina State University shall obtain insurance under the provisions of this section, it is hereby authorized and empowered to waive its governmental immunity from liability for damage to property or injury to death to persons arising from the assembling, construction of, use and operation of nuclear reactors. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but only to the extent that North Carolina State University is indemnified by such insurance.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to do a business of insurance in this State except to the extent that such insurance may be furnished by or through a governmental agency created for the purpose of insuring against such hazards or through reinsurance pools or associations established to insure against such hazards.

Any person sustaining property damage or personal injury may sue North

Carolina State University for damages for injury arising out of the construction, assembly, use or operation of a nuclear reactor on the campus of the University in the Superior Court of Wake County, and to the extent that the University is indemnified by insurance, it shall be no defense to any such action that the University was engaged in the performance of a governmental or discretionary function of the University. In the case of death alleged to have been caused by the assembly, construction, use or operation of such nuclear reactor, the personal representative of the deceased person may bring such action.

Nothing in this section shall in any way affect any other actions which have been or may hereafter be brought under the Tort Claims Act against North Carolina State University, nor shall the provisions of this section in any way abrogate or replace the provisions of the Workmen's Compensation Act. (1969, c. 1023.)

Part 3B. The University of North Carolina at Wilmington.

§ 116-39.1. The University of North Carolina at Wilmington.—(a) Wilmington College shall become a campus of the University of North Carolina under the designation the University of North Carolina at Wilmington on July 1, 1969, whereupon it shall cease to be subject to any of the provisions and terms of article 2, chapter 116 of the General Statutes, and shall become subject to the terms of article 1, chapter 116 of the General Statutes.

(b) The board of trustees of Wilmington College shall, on or before July 1, 1969, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title and interest of the grantor in and to the real and personal property of Wilmington College, including all endowments, executors' contracts, and unexpended State appropriations or other appropriations; New Hanover County and the city of Wilmington shall continue to be solely liable for the repayment of all indebtedness incurred by that county in aid of Wilmington College. (1969, c. 297, s. 2.)

Editor's Note.—Subsection (a) of this section is effective July 1, 1969. Subsection (b) is effective April 24, 1969.

Part 3C. The University of North Carolina at Asheville.

§ 116-39.2. The University of North Carolina at Asheville. — (a) Asheville-Biltmore College shall become a campus of the University of North Carolina under the designation the University of North Carolina at Asheville on July 1, 1969, whereupon it shall cease to be subject to the terms and provisions of article 2, chapter 116 of the General Statutes, and shall become subject to the terms of article 1, chapter 116 of the General Statutes.

(b) The board of trustees of Asheville-Biltmore College shall, on or before July 1, 1969, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title and interest of the grantor in and to the real and personal property of Asheville-Biltmore College, including all endowments, executors' contracts, and unexpended State appropriations or other appropriations; Buncombe County, the city of Asheville participating in the financial affairs of said college, shall continue to be solely liable for the repayment of all indebtedness incurred by said county and municipalities in aid of Asheville-Biltmore College, if such obligations have been heretofore contracted for and assumed. (1969, c. 297, s. 3.)

Editor's Note.—Subsection (a) of this section is effective July 1, 1969. Subsection (b) is effective April 24, 1969.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars (\$3,500,000); provided, further, the board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars (\$3,500,000.00) during the biennium ending June 30, 1971. The bonds shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and shall bear interest at such rate or rates not exceeding seven and one-half per centum (7.5%) per annum, as may be determined by the board, and may be made redeemable before maturity at the option of the board at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this part or any recitals in any bonds issued under the provisions of this part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, at it may determine to be for the best interests of the University, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than seven and one-half per centum (7.5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the board may, under like restric-

tions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this part.

Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236.)

Editor's Note.—

The 1967 amendment substituted "1969" for "1967" in the first sentence.

The 1969 amendment added the proviso

at the end of the first sentence and increased the maximum interest rate from six percent to seven and one-half percent.

Part 5. Miscellaneous Provisions.

§ 116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.

(b) The board of trustees of the University of North Carolina is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campuses not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, as in its opinion may be necessary. Provided, however, that, based upon a traffic and engineering investigation, the board of trustees may determine and fix speed limits on streets and highways subject to such rules, regulations and ordinances lower than those provided in G.S. 20-141, and the board of trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of other rules, regulations and ordinances. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding 30 days.

(1969, c. 1011.)

Editor's Note. — The 1969 amendment added the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Opinions of Attorney General. — Mr. J.D. Wright, Business Manager, N.C. State University at Raleigh, 9/5/69.

§§ 116-44.3 to 116-44.9: Reserved for future codification purposes.

ARTICLE 1A.

Regional Universities.

§ 116-44.10. **Regional universities.**—(a) There shall be, in addition to The University of North Carolina as provided for in article 1 of this chapter, one or more regional universities, which shall be so designated by or pursuant to this article.

(b) The regional universities shall provide undergraduate and graduate instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and said regional universities shall provide for research in the liberal arts and sciences, pure and applied. The regional universities shall provide other undergraduate and graduate programs of instruction as are deemed necessary to meet the needs of their constituencies and of the State. Regional universities insofar as possible shall extend their educational activities to all persons of the State who are unable to avail themselves of their advantages as resident students by means of extension courses, by lectures, and by such other means and methods as may seem to the boards of trustees and administrative officers as most effective. The president and professors of each regional university shall have the power of conferring all such degrees or marks of distinction as are conferred by colleges or universities, including the doctor's degree. All degree programs or marks of distinction offered or conferred by a regional university shall be offered or conferred by and with the consent of the board of trustees of the university and subject to the approval of the North Carolina Board of Higher Education and in any case doctoral programs shall not be offered before the completion of the study on the role of regional universities as required by G.S. 116-44.16, and consistent with appropriations made therefor.

(c) Each regional university shall have a board of trustees, president, and endowment fund which shall in all respects correspond to the board of trustees, president, and endowment fund as provided for in G.S. 116-46, with the substitution of the word "university" for the word "college" where appropriate.

(d) The provisions of G.S. 116-46.2 shall apply to each regional university.

(e) Upon the effective date of the redesignation of any college as a regional university by or pursuant to this article:

- (1) The members of the board of trustees and the officers of the institution shall continue in office for the remainder of their unexpired terms;
- (2) All references to that institution in statutes, contracts, and other legal documents, are amended to incorporate the new name of the institution;
- (3) Title to all assets and the duties imposed by all obligations of the institution under its former name shall continue unimpaired as assets and obligations of the redesignated institution. (1967, c. 1038; 1969, c. 532, s. 1.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote subsection (b).

§ 116-44.11. **East Carolina University.**—Effective July 1, 1967:

- (1) East Carolina College is redesignated "East Carolina University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "East Carolina College" are amended to read "East Carolina University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ 116-44.12. Appalachian State University.—Effective July 1, 1967:

- (1) Appalachian State Teachers College is redesignated "Appalachian State University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "Appalachian State Teachers College" are amended to read "Appalachian State University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ 116-44.13. Western Carolina University.—Effective July 1, 1967:

- (1) Western Carolina College is redesignated "Western Carolina University," subject to the provisions of § 116-44.10 as herein set forth.
- (2) In all other statutes, the words "Western Carolina College" are amended to read "Western Carolina University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amend-

ment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ 116-44.14. North Carolina Agricultural and Technical State University.—Effective July 1, 1967:

- (1) Agricultural and Technical College of North Carolina is redesignated "North Carolina Agricultural and Technical State University," subject to the provision of § 116-44.10 as herein set forth.
- (2) In all other statutes and captions thereof, the words "Agricultural and Technical College of North Carolina" are amended to read "North Carolina Agricultural and Technical State University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that an amendment be made in § 116-46.3. Since the amendment has been made as directed

by the subdivision, it is not set out herein, and original subdivision (3) has been renumbered subdivision (2).

§ 116-44.14A. Pembroke State University.—Notwithstanding any other provision of law, Pembroke State College is hereby redesignated as "Pembroke State University," subject to the provisions of § 116-44.10. Pembroke State University shall be subject to all the laws and provisions of laws applicable to regional universities. (1969, c. 388.)

Editor's Note.—The act adding this section is effective July 1, 1969.

§ 116-44.14B. North Carolina Central University.—Effective July 1, 1969:

- (1) North Carolina College at Durham is redesignated "North Carolina Central University," and is made subject to the provisions of § 116-44.10.
- (2) In all other statutes and titles or captions thereof, the words "North Carolina College at Durham" and the words "North Carolina College of Durham" are amended to read "North Carolina Central University." (1969, c. 608, s. 1.)

§ 116-44.14C. Elizabeth City State University. — Effective July 1, 1969:

- (1) Elizabeth City State College is redesignated "Elizabeth City State University," and is made subject to the provisions of § 116-44.10.

- (2) In all other statutes and titles or captions thereof, the words "Elizabeth City State College" are amended to read "Elizabeth City State University." (1969, c. 801, s. 2.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ 116-44.14D. **Fayetteville State University.**—Effective July 1, 1969:

- (1) Fayetteville State College is redesignated "Fayetteville State University," and is made subject to the provisions of § 116-44.10.
 (2) In all other statutes and titles or captions thereof, the words "Fayetteville State College" are amended to read "Fayetteville State University." (1969, c. 801, s. 3.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ 116-44.14E. **Winston-Salem State University.** — Effective July 1, 1969:

- (1) Winston-Salem State College is redesignated "Winston-Salem State University," and is made subject to the provisions of § 116-44.10.
 (2) In all other statutes and titles or captions thereof, the words "Winston-Salem State College" are amended to read "Winston-Salem State University." (1969, c. 801, s. 4.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ 116-44.15. **Designation of additional regional universities.** — The board of trustees of any college that operates under the provisions of article 2 of this chapter and that for at least 10 years has been authorized to grant the master's degree, and is also subject to the provisions of G.S. 116-46.3, may apply to the Board of Higher Education, requesting the redesignation of that college as a regional university pursuant to this article. After making such study as it may find necessary, the Board of Higher Education shall make a report to the next regular session of the General Assembly, setting forth its findings and recommendations on the requested redesignation. The General Assembly thereupon shall make such disposition of the matter as it shall deem appropriate; provided, however, that this section shall not prevent any college designated under article 2 of this chapter from applying for any program of affiliation, change in status or other reorganization program, not inconsistent with the provisions of this article. (1967, c. 1038.)

§ 116-44.16. **Future policy with respect to regional universities.**— Not later than July 1, 1972, the State Board of Higher Education pursuant to this article shall study the effectiveness of the regional universities and their proper future role and status in the State system of public higher education, and shall make a report to the General Assembly setting forth its findings and recommendations on that subject. The study shall include, but not be limited to, consideration of the continuation of the existing arrangements, the establishment of a single board of trustees for all regional universities, and the conversion of one or more of the regional universities into campuses of the University of North Carolina. (1967, c. 1038.)

ARTICLE 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

§ 116-45. **Primary purpose of named institutions.**

- (1): Repealed by Session Laws 1967, c. 1038.

- (2): Repealed by Session Laws 1969, c. 388, effective July 1, 1969.
- (3): Repealed by Session Laws 1969, c. 608, s. 2, effective July 1, 1969.
- (5): Repealed by Session Laws 1969, c. 801, ss. 5, 6, effective July 1, 1969.
- (6): Repealed by Session Laws 1969, c. 297, s. 5, effective July 1, 1969. (1957), c. 1142; 1963, cc. 421, 422; c. 448, s. 21; c. 507; 1965, c. 31, s. 3; c. 1096, s. 6½; 1967, c. 1038; 1969, cc. 130, 131; c. 297, s. 5; c. 388; c. 608, s. 2; c. 801, ss. 5, 6.)

Editor's Note.—

The 1967 amendment deleted "Appalachian State Teachers College," "East Carolina College" and "Western Carolina College" in the caption to this article and in the first sentence of subdivision (1) of this section. Since the subdivision applied only to those three institutions, the effect of the 1967 act was to eliminate the subdivision.

Prior to its repeal subdivision (2) had been previously amended by Session Laws 1969, c. 131.

Prior to its repeal, subdivision (5) had been amended by Session Laws 1969, c. 130.

Session Laws 1969, c. 297, s. 5, effective July 1, 1969, deleted "Asheville-Biltmore College" and "Wilmington College" in the caption to this article and repealed subdivision (6), relating to Asheville-Biltmore College and Wilmington College.

Session Laws 1969, c. 388, effective July 1, 1969, deleted "Pembroke State College" in the caption to this article and repealed subdivision (2), relating to Pembroke State College.

Session Laws 1969, c. 608, s. 2, effective July 1, 1969, repealed subdivision (3), relating to North Carolina College of Durham.

Session Laws 1969, c. 801, effective July 1, 1969, struck "Elizabeth City State College, Fayetteville State College, Winston-Salem State College" from the caption to this article and repealed subdivision (5) of this section, relating to those three colleges. It also repealed Session Laws 1969, c. 130, which had rewritten former subdivision (5).

As subdivision (4) was not affected by the amendments, it is not set out.

§ 116-45.1: Repealed by Session Laws 1969, c. 801, s. 7, effective July 1, 1969.

§ 116-45.2: Repealed by Session Laws 1969, c. 297, s. 6, effective July 1, 1969.

§ 116-46.1A. **Motor vehicle laws applicable to the campus of Western Carolina University; parking regulations.**—(a) All of the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, roads, alleys and driveways on the campus of Western Carolina University. Any person violating any of the provisions of said chapter 20 of the General Statutes, as herein made applicable, in or on the streets, roads, alleys or driveways on the campus of Western Carolina University shall, upon conviction thereof, be punished as therein prescribed and as provided by chapter 20 of the General Statutes, relating to motor vehicles. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, roads, alleys and driveways on the campus of Western Carolina University as is now vested by law in the board of trustees of Western Carolina University.

(b) The board of trustees of Western Carolina University is authorized and empowered to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, roads, alleys and driveways on the campus of Western Carolina University, and to establish parking areas on the said campus not inconsistent with the provisions of chapter 20 of the General Statutes of North Carolina. All regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the board of trustees, printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any of such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars

(\$50.00) or imprisonment for not exceeding thirty days or, in the discretion of the court, both such fine and imprisonment.

(c) The board of trustees of Western Carolina University may by regulation or ordinance provide for a system of registration of all motor vehicles where the owner of said motor vehicle intends and does park same in the parking places or assigned parking places on the campus of Western Carolina University or the owner keeps said vehicle on the campus of Western Carolina University. The board of trustees of Western Carolina University may by regulation or ordinance establish a system of citations that may be issued to owners of motor vehicles who park their vehicles on the campus of said University in violation of the traffic or parking regulations as established by law or regulation. The board of trustees of Western Carolina University may by regulation or ordinance provide that the administrative officers or the student government or a combination thereof may administer said system of citations and exercise the right to prohibit repeated violators of such ordinances and regulations from parking on the campus or using the parking facilities thereof. (1969, c. 853.)

§ 116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.—Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina University, North Carolina Central University, North Carolina Agricultural and Technical State University, Appalachian State University, and Western Carolina University, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, non-duplicating instruction not beyond the masters degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632; 1967, c. 1038; 1969, c. 114, s. 1; c. 608, s. 1.)

Editor's Note.—The 1967 amendment deleted "East Carolina College," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "Western Carolina University" for "Western Carolina College" and inserted "North Carolina Agricultural and Technical State University" all in the first sentence.

The first 1969 amendment inserted "East Carolina University" in the first sentence.

Section 3, c. 114, Session Laws 1969, provides that the act shall be in full force and effect retroactively from and after the 30th day of June, 1967.

The second 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College of Durham."

§ 116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.—The board of trustees of East Carolina University is hereby authorized to create a school of medicine at East Carolina University, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association. The Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2; 1967, c. 1038.)

Editor's Note.—

The 1967 amendment substituted "East

Carolina University" for "East Carolina College."

ARTICLE 4.

School for Professional Training in Performing Arts.

§ 116-70. **Applicable statutes generally; revenue bonds.**—The school is hereby declared to be a state-supported institution of higher learning within the meaning of article 21 of chapter 116 of the General Statutes of North Carolina, the same as if the school were enumerated in said article 21 or in G.S. 116-45, and all of the provisions of said article 21 are hereby made applicable to the school and its board of trustees.

In addition to the powers conferred thereon by this section and G.S. 116-66, the board of trustees, subject to the approval of the Advisory Budget Commission, is hereby authorized to issue from time to time revenue bonds of said board for the purpose of providing funds, with any other available funds, for acquiring dormitory facilities presently being leased by the school. (1967, c. 1040, s. 1.)

Editor's Note. — The 1967 amendment renumbered former § 116-70 as § 116-71 but since a § 116-71 had been added by Session Laws 1965, c. 1148, s. 1, former § 116-70 has been designated § 116-70.1 herein.

Session Laws 1967, c. 1040, s. 2, provides: "The powers conferred by this act shall be regarded as supplemental and in addition to powers conferred by all other laws and shall not supplant or repeal any powers conferred by any other law."

§ 116-70.1. **Other applicable statutes.** — All of the powers, duties and responsibilities herein conferred shall be subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "Executive Budget Act," and article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1116; 1967, c. 1040, s. 3.)

Cross Reference.—See Editor's note to § 116-70.

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ 116-149, 116-149.1: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

§ 116-150: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

Editor's Note.—

Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in

G.S. 165-22 (a) (2). All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

§§ 116-151 to 116-153: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

ARTICLE 16.

State Board of Higher Education.

§ 116-156. **Membership; appointment, term and qualifications; vacancies.**—The Board shall consist of twenty-two citizens of North Carolina, one of whom shall be a member of the State Board of Education to be appointed by the Governor, eight of whom shall be appointed by the Governor to represent the

public at large, but none of whom shall be officers or employees of the State, or officers, employees or trustees of the institutions of higher education, four of whom shall be selected by the boards of trustees of state-supported senior colleges, and two of whom shall be selected by the board of trustees of the University, provided, no trustee member shall be a member of the General Assembly. The Governor shall serve ex officio as a member and as chairman of the Board. The six persons who are the chairmen of the committees on appropriations, finance and higher education in the Senate and House of Representatives shall serve ex officio as members of the Board. The four senior colleges, whose trustees shall select one of their members as a Board member to serve for a two-year term, shall be selected by the Governor in such order of rotation as he may choose every two years; provided, that the right of selection of such Board member shall be rotated among all institutions equally.

Members of the Board other than the six selected by the trustees of institutions and the ex officio members shall be appointed by the Governor for terms of six years, except that of the first Board appointed, three members shall serve for two years, three shall serve for four years and three for six years. Terms of all members of the first Board so selected shall commence July 1, 1965. The term of each of the six ex officio members from the General Assembly shall commence with his appointment to the committee chairmanship and shall continue until his successor as committee chairman has been appointed.

All memberships, except ex officio memberships, shall be subject to confirmation by the House of Representatives and the Senate in joint session assembled. The Governor shall forward all appointments to the General Assembly before the fortieth legislative day of each regular session. The Governor shall, without such confirmation, appoint members to fill vacancies for unexpired terms.

Appointees to the Board shall be selected for their interest in and ability to contribute to the fulfillment of the purpose of the Board. All members of the Board shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. (1955, c. 1186, s. 3; 1965, c. 1096, s. 2; 1969, c. 400, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted "twenty-two" for "fifteen" near the beginning of the first sentence of the first paragraph, added the second and third sentences of the first paragraph, in-

serted, in the first sentence of the second paragraph, "and the ex officio members," added the last sentence of the second paragraph and rewrote the first and second sentences of the third paragraph.

§ 116-157. Vice-chairman and secretary. — The Board shall elect annually from among its members a vice-chairman and a secretary. (1955, c. 1186, s. 4; 1969, c. 400, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted "chairman" preceding "vice-chairman."

§ 116-158. Powers and duties generally.

- (1) The primary function of the Board of Higher Education shall be to plan and coordinate the major educational functions and activities of higher education in the State and to allot the functions and activities of the institutions of higher education in addition to the purposes specified in articles 1 and 2 of chapter 116 of the General Statutes. No public senior educational institution shall request from the General Assembly, the Advisory Budget Commission or any other State agency approval of, or funding for, any new degree program or educational function or activity until the same has been approved by the board of trustees of the institution and acted upon, in accordance with regularly established procedures, by the Board of Higher Education. The Board shall

give the Governor, the General Assembly and the various institutions advice on higher education policy and problems.

(1969, c. 532, s. 3.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, rewrote the second sentence of subdivision (1).

As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

ARTICLE 18A.

*Contracts of Minors Borrowing for Higher Education;
Scholarship Revocation.*

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.—All minors in North Carolina of the age of seventeen years and upwards shall have full power and authority to enter into written contracts of indebtedness, at a rate of interest not exceeding the contract rate authorized in chapter 24 of the General Statutes, with persons and educational institutions or with firms and corporations licensed to do business in North Carolina and to execute notes evidencing such indebtedness. Such loans shall be:

- (1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;
- (2) For the sole purpose of borrowing money to obtain post-secondary education at an accredited college, university, junior college, community college, technical institute, industrial education center, business or trade school provided, however, that none of the proceeds of such loans shall be used to pay for any correspondence courses;
- (3) The proceeds of any loan shall be disbursed either directly to the educational institution for the benefit of the borrower or jointly to the borrower and the educational institution. (1963, c. 780; 1969, c. 1073.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 116-174.2. Grounds for revocation of scholarships.—Any student regularly registered and enrolled as an undergraduate, graduate, or professional student in a state-supported college, university or community college who shall be convicted, enter a plea of guilty or nolo contendere upon an indictment or charge for engaging in a riot, inciting a riot, unlawful demonstration or assembly, seizing or occupying a building or facility, sitting down in buildings they have seized, or lying down in entrances to buildings or any facilities, or on the campus of any college, university, or community college, or any student, whether an undergraduate, graduate or professional student who shall forfeit an appearance bond on an indictment or charge of any of the above-named offenses, shall have revoked and withdrawn from his benefit all state-supported scholarships or any State funds granted to him for educational assistance. It shall be the duty of all persons or officials having charge of and authority over the granting of state-supported scholarships or any other form of financial assistance to immediately revoke and withdraw same in the event and upon the happening of any of the conditions or matters above enumerated; provided, however, that in subsequent academic terms any such student shall be eligible to be considered for and to be granted financial assistance from State funds. (1969, c. 1019.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

- (1) The word "board" shall mean the board of trustees of any of the following:
The University of North Carolina, North Carolina Agricultural and

Technical State University, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Central University, Pembroke State University, Western Carolina University, and Winston-Salem State University.

(1967, c. 1038; 1969, c. 297, s. 7; c. 388; c. 608, s. 1; c. 801, ss. 2-4.)

Editor's Note.—

The 1967 amendment substituted "North Carolina Agricultural and Technical State University" for "Agricultural and Technical College of North Carolina," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "East Carolina University" for "East Carolina College," and substituted "Western Carolina University" for "Western Carolina College" in subdivision (1).

The first 1969 amendment, effective July 1, 1969, deleted "Asheville-Biltmore College and Wilmington College" at the end of subdivision (1).

The second 1969 amendment, effective July 1, 1969, substituted "Pembroke State

University" for "Pembroke State College" in subdivision (1).

The third 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College at Durham" in subdivision (1).

The fourth 1969 amendment, effective July 1, 1969, substituted "Elizabeth City State University" for "Elizabeth City State College," "Fayetteville State University" for "Fayetteville State Teachers College" and "Winston-Salem State University" for "Winston-Salem State College" in subdivision (1).

As the rest of the section was not changed by the amendments, only subdivision (1) is set out.

§ 116-176. Issuance of bonds.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the reso-

lution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this article.

Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1957, c. 1131, s. 2; 1969, c. 1158, s. 1.)

Editor's Note. — The 1969 amendment "five per centum (5%)" in the second and substituted "eight per centum (8%)" for last sentences of the first paragraph.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-187. Purpose of article.—The purpose of this article is to authorize the boards of trustees of the educational institutions designated herein to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at said institutions, housing of faculty, and for revenue-producing parking decks or structures. (1963, c. 847, s. 1; 1967, c. 1148, s. 1.)

Editor's Note. — The 1967 amendment "producing parking decks or structures" at added "housing of faculty, and for revenue- the end of this section.

§ 116-189. Definitions.

- (1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, North Carolina Agricultural and Technical State University, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Central University, Pembroke State University, Western Carolina University, and Winston-Salem State University, or such above-referred to institution regardless of whatever

name it may be called, or any additional state-supported institutions of higher learning that may be provided by the General Assembly of North Carolina or, if any such board shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers vested under this article in the board shall be given by law.

- (5) The word "project" shall mean and shall include any one or more buildings or facilities for student housing, student activities, physical education or recreation of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for student services such as lounges, rest rooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar student services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities. The word "project" shall also mean and shall include any one or more buildings or facilities for faculty housing and revenue-producing parking decks or structures, of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, and including necessary land and interests in land, furnishings, equipment, and parking facilities.

(1967, c. 1038; c. 1148, s. 2; 1969, c. 297, s. 8; c. 388; c. 608, s. 1; c. 801, ss. 2-4.)

Editor's Note.—

The first 1967 amendment substituted "North Carolina Agricultural and Technical State University" for "Agricultural and Technical College of North Carolina," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "East Carolina University" for "East Carolina College," and substituted "Western Carolina University" for "Western Carolina College" in subdivision (1).

The second 1967 amendment added the last sentence in subdivision (5).

The first 1969 amendment, effective July 1, 1969, deleted "Asheville-Biltmore College" and "Wilmington College" in subdivision (1).

The second 1969 amendment, effective

July 1, 1969, substituted "Pembroke State University" for "Pembroke State College" in subdivision (1).

The third 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College at Durham" in subdivision (1).

The fourth 1969 amendment, effective July 1, 1969, substituted "Elizabeth City State University" for "Elizabeth City State College," "Fayetteville State University" for "Fayetteville State Teachers College" and "Winston-Salem State University" for "Winston-Salem State College" in subdivision (1).

As the rest of the section was not affected by the amendments, it is not set out.

§ 116-191. Issuance of bonds.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty (50) years from their date or dates, shall bear in-

terest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this article and other powers vested in the board under this article may be exercised by the board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions

or things which are specifically required by this article. (1963, c. 847, s. 5; 1969, c. 1158, s. 2.)

Editor's Note. — The 1969 amendment substituted "five per centum (5%)" in the second and last sentences of the first paragraph.

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§ 116-199. Use of facilities for speaking purposes.

Constitutionality. — The 1965 enactment of this section and § 116-200, and the procedures and regulations adopted by the board of trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is

true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. *Dickson v. Sitterson*, 280 F. Supp. 486 (M.D.-N.C. 1968).

§ 116-200. Enforcement of article.

Constitutionality. — The 1965 enactment of this section and § 116-199, and the procedures and regulations adopted by the board of trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is

true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. *Dickson v. Sitterson*, 280 F. Supp. 486 (M.D.-N.C. 1968).

ARTICLE 23.

State Education Assistance Authority.

§ 116-202. **Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.**—In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1.)

Editor's Note. — The 1967 amendment inserted "vocational and" near the beginning of the section, substituted "attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations

represent" for "at institutions of higher education representing" in the first paragraph and substituted "training or" for "an" preceding "education" at the end of that paragraph.

§ 116-206. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.—With the funds available to the Authority, for purposes other than the payment of personnel and the lease or rental of offices or equipment, the Authority may acquire from any bank or other lending institution a contingent interest of one hundred percent (100%) of any individual obligation; the total contingent interest of the Authority on all such obligations shall not exceed at any one time a sum equal to twelve and one-half times the total funds which the Authority can employ to acquire such contingent interests. When the Authority acquires any such contingent interest, it may require the payment to it of a portion of the interest payable upon any such obligation. In each such acquisition, the Authority shall provide that at such time as the obligation becomes delinquent, the bank or other lending institution shall notify the Authority forthwith, and shall transfer forthwith to the Authority, by assignment or otherwise, an interest in such obligation equal to the contingent interest of the Authority therein. The bank or other lending institution and the Authority shall forthwith take such steps as may be necessary to recover the balance due upon any such obligation; any such recovery shall be apportioned between the Authority and the bank or other lending institution as their respective interests may appear. (1965, c. 1180, s. 1; 1967, c. 955, s. 2.)

Editor's Note. — The 1967 amendment substituted "of one hundred percent (100%)" for "not exceeding eighty percent (80%)" in that sentence. struck out "of this State" following "lending institution" in the first sentence and

§ 116-209.1. Provisions in conflict.—Any of the foregoing provisions of this act which shall be in conflict with the provisions hereinbelow set forth shall be repealed to the extent of such conflict. (1967, c. 1177.)

§ 116-209.2. Additional definitions.—As used in this act the term "eligible institution" shall have the same meaning as the definition of such term in section 996 and section 1085 of Title 20 of the United States Code and the term "student loan" shall mean loans to residents of this State to enable them to obtain an education in an eligible institution. (1967, c. 1177.)

§ 116-209.3. Additional powers.—The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this act and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. (1967, c. 1177.)

§ 116-209.4. Authority to issue bonds.—The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue

bonds of the Authority in an aggregate principal amount outstanding at any time of not exceeding twelve and one-half million dollars. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 20 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this act.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in § 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this act without obtaining, except as otherwise expressly provided in this act, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this act and the provisions of the resolution authorizing the issuance of such bonds. (1967, c. 1177.)

§ **116-209.5. Bond resolution.**—The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the purchase or sale of obligations, the making of student loans, the insurance of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this act and may be payable, together with other expenses of operation and administration under this act incurred by the Authority, from the Loan Fund. (1967, c. 1177.)

§ **116-209.6. Revenues.**—The Authority is authorized to fix and collect fees, charges, interest and premiums for making or insuring student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this act. The Authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the Authority's functions under this act. The Authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the Authority, provide for the transfer of surplus money in the sinking fund to the credit of the Loan Fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 1177.)

§ **116-209.7. Trust funds.**—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the act, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed to be trust funds to be

held and applied solely as provided in this act. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and such resolution may provide. (1967, c. 1177.)

§ 116-209.8. **Remedies.**—Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this act, and may enforce and compel the performance of all duties required by this act or by such resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans. (1967, c. 1177.)

§ 116-209.9. **Negotiable instruments.**—Notwithstanding any of the foregoing provisions of this act or any recitals in any bonds issued under the provisions of this act, all such revenue bonds and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this State. (1967, c. 1177.)

§ 116-209.10. **Bonds eligible for investment.**—Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 1177.)

§ 116-209.11. **Additional pledge.**—Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this act, to insure or guarantee the payment of interest or principal on student loans, or otherwise to aid in promoting or facilitating student loans. (1967, c. 1177.)

§ 116-209.12. **Credit of State not pledged.**—Bonds issued under the provisions of this act shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this act may be made payable from funds provided pursuant to this act and no liability or obligation shall be

incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 1177.)

§ 116-209.13. Tax exemption.—The exercise of the powers granted by this act in all respects will be for the benefit of the people of the State, for their well being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this act or upon the income therefrom, and the bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1967, c. 1177.)

§ 116-209.14. Annual reports.—The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operations of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177.)

§ 116-209.15. Merger of trust fund.—The Authority may merge into the Loan Fund the trust fund established pursuant to § 116-209 hereof and may transfer from such trust fund to the credit of the Loan Fund all money, investments and other assets and resources credited to such trust fund, for application and use in accordance with the provisions of this act pertaining to the Loan Fund, including the power to pay expenses of the Authority from the Loan Fund to the extent that other funds are not available therefor. (1967, c. 1177.)

ARTICLE 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

§ 116-212. Campus of state-supported institution of higher education subject to curfew.—The chancellor or president of any state-supported institution of higher learning may designate periods of time during which the campuses of such institutions and designated buildings and facilities connected therewith are off-limits and subject to a curfew as to all persons who are not faculty members, staff personnel, currently enrolled students of that institution, local law-enforcement officers, members of the national guard on active duty, members of the General Assembly, the Governor of North Carolina and/or his designated agents, persons authorized by the chief administrative officer of the institution or his designated agent, and any person who satisfactorily identifies himself as a reporter for any newspaper, magazine, radio or television station. Any person not herein authorized who comes onto or remains on said campus in violation of this section shall be punished as set out in § 116-213. (1969, c. 860, s. 1.)

§ 116-213. Violation of curfew a misdemeanor; punishment.—(a) Any person who during such period of curfew utilizes sound-amplifying equipment of any kind or nature upon the premises subject to such curfew in an educational, administrative building, or in any facility owned or controlled by the State or a State institution of higher learning, or upon the campus or grounds of any such institution, without the permission of the administrative head of the institution or his designated agent, shall be guilty of a misdemeanor and punished as hereinafter set forth. For the purposes of this section the term "sound-amplifying equipment" shall mean any device, machine, or mechanical contrivance which is capable of amplifying sound and capable of delivering an electrical input of one or more watts to the loudspeaker, but this section shall not include radios and televisions.

(b) Any person convicted of violating any provision of § 116-212 or 116-213, or who shall enter a plea of guilty to such violation or a plea of nolo contendere, shall be fined not exceeding five hundred dollars (\$500.00) or imprisoned not exceeding six months, or both such fine and imprisonment, in the discretion of the court. (1969, c. 860, ss. 2, 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

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I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1969 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN

Attorney General of North Carolina

